IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 2905

CLALLAM LUMBER COMPANY, a Corporation,
Appellant,

vs.

CLALLAM COUNTY, a Municipal Corporation, and Clifford L. Babcock, Treasurer,
Appellees.

No. 2906

CHARLES H. RUDDOCK and TIMOTHY H. McCARTHY,
Appellants,

vs.

CLALLAM COUNTY, a Municipal Corporation, and Clifford L. Babcock, Treasurer,
Appellees.

No. 2907

CLALLAM LUMBER COMPANY, a Corporation,
Appellant,

vs.

CLALLAM COUNTY, a Municipal Corporation, and Herbert H. Wood, Treasurer,
Appellees.

No. 2908

CHARLES H. RUDDOCK and TIMOTHY H. McCARTHY,
Appellants,

vs.

CLALLAM COUNTY, a Municipal Corporation, and Herbert H. Wood, Treasurer,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

BRIEF OF APPELLANTS

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BRIEF OF APPELLANTS

As these cases arose out of substantially the same matters, were consolidated for hearing and tried below together, upon the same evidence, and the parties, appellants and appellees, are represented respectively by the same counsel, and were so represented in the court below, and as they are all controlled by the same principles of law and are so interlocked in their relations to the evidence that it would be difficult for counsel to present them separately, or for the Court to examine and review them otherwise, on stipulation of the parties under date of January 17, 1917, herein filed, we treat them under one brief.

As separate decrees were entered in each of the four cases below, we have taken and perfected separate appeals in each case. Under an order of the Honorable William B. Gilbert, one of the judges of this Court, of date December 12, 1916, and Journal Entry of this Court of January 8, 1917, confirming the same, based upon the stipulation of the appellants and appellees (Record Cause No. 2906, pages 63-64), the statement of facts and also the Court's memorandum decision were printed in the record of appeal only in Cause No. 2905, Clallam Lumber Company vs. Clallam County and Babcock, treasurer, to the record of which case, as the principal case, the references will be hereafter directed unless otherwise designated.

We will first outline the proceedings in this Cause No. 2905.

No. 2905

CLALLAM LUMBER COMPANY, a Corporation,
Appellant,

vs.

CLALLAM COUNTY, a Municipal Corporation, and CLIFFORD L. BABCOCK, Treasurer,
Appellees

STATEMENT OF THE CASE

The Clallam Lumber Company, plaintiff, now appellant, a Michigan corporation, was the owner of some 41,000 acres of timber lands situated in the interior of Clallam County, Washington.

It filed its bill in the United States District Court for the Western District of Washington, Northern Division, in equity, on May 29, 1914, against Clallam County and its treasurer, to vacate and set aside the taxes which had been levied upon these lands by the county, for the year 1913, or rather such amount of these taxes as were unjust and to enjoin the issuance of delinquency certificates against said lands and the sale of the lands by the treasurer based upon the alleged fraudulent and unlawful assessment and equalization of its taxes in the manner hereinafter stated.

The following is a general outline of the bill:

It is alleged that the plaintiff was at all times

named a corporation organized under the laws of the State of Michigan and domiciled therein, but qualified to do business in the State of Washington, and that the defendant Clallam County was a municipal corporation of the State of Washington, and Clifford L. Babcock was its treasurer, and was a citizen and resident of Clallam County, Washington. Also the jurisdictional amount involved is alleged (Record pp. 4-5).

It is claimed that in assessing these lands for taxation for the year 1913, the assessor of Clallam County and Board of Equalization in equalizing the roll, grossly, arbitrarily, unlawfully overvalued them, in pursuance of a policy inaugurated by the above named officers and followed by them for a number of years prior to 1913. That it was the policy and practice to assess the timber lands which lie chiefly in the Western portion of the county at grossly higher values in proportion to their true value in money, than all other classes of property in the county, and particularly the agricultural lands and town lots in the City of Port Angeles, these lands and lots lying in the eastern part of the county.

That the western or timbered portion of the county, being lands owned mostly by non-residents, are sparsely settled, containing only a few hundred inhabitants and those settled for the great part at Forks and Quillayute Prairies. That but few of the

voters of the county reside in the west end. The county seat is the City of Port Angeles, a town of some 5,000 inhabitants, situated in the middle of the three districts of the county commissioners.

In the east district are prosperous farming communities, well settled, particularly in the vicinity of Sequim and Dungeness, the population in this district being approximately 1,500. The voting power of the county is therefore in the east and middle districts, the voters in the west district having little voice in county affairs (Record p. 13).

The assessing officers of the county, with the exception of one commissioner from the west district, are elected by the votes of those resident in the middle and east districts, a preponderance of the votes being in those districts.

The County Board of Equalization is, and for the years 1912 and 1913 was, composed of five members, three being the county commissioners and the other two the county assessor and county treasurer. During the time complained of the assessor and treasurer and the county commissioner for the middle district, the latter being chairman of the board of county commissioners, all resided in Port Angeles. The fourth member of the board resided in the east district and the remaining one member resided in the west district. (p. 15).

These members of the Board of Equalization resident in Port Angeles were themselves owners of property at Port Angeles.

It is charged that in order to favor themselves and their constituents at Port Angeles, and to place the burden of taxation upon the timber lands owned chiefly by non-residents, the assessor and the three members of the Board of Equalization resident at Port Angeles had conspired with the east end commissioner to put low valuations upon property at Port Angeles and in its vicinity, and high and unequal values upon timber lands situated in the west end of the county, and particularly upon the timber lands of the plaintiff and other timber lands in the interior of the county (p. 16).

The City of Port Angeles is located on tide water harbor, which it was and is the desire of its inhabitants, may become the seat of considerable commerce. To this end it was the desire of these citizens that the timber owners of the county build mills at Port Angeles, construct railroads into the interior, transport logs from the interior to Port Angeles and there saw them into lumber, thereby adding to the growth and development of Port Angeles.

It is charged that it was the purpose of the assessing officers of Clallam County, representing as they believe the sentiments of the voters at Port Angeles

and the eastern district of the county, to assess the timber lands in the west end of the county at exorbitant sums, as a means of compelling the owners to cut the timber, build railroads and mills and aid the development of the county as aforesaid. Through influential citizens of Port Angeles the plaintiff has been assured that if it would begin to operate its timber and employ a considerable number of men, it might rely that it would thereafter be fairly and equitably treated as respects taxation (p. 18).

The plaintiff's lands lie in the valleys of the Solduc and Calawa Rivers and upon the benches and ridges between the same.

These lands are at present wholly destitute of facilities for transportation and it is impossible to bring this timber into the market. For this purpose it would be necessary that facilities be provided for transportation to Grays Harbor on the south or to the Straits of Fuca on the north. Grays Harbor is far distant, no railroad from that direction extending farther north than Moclips, a distance of more than sixty miles from these lands.

Few of the plaintiff's lands are less than twelve miles from the straits and most of them lie a still greater distance therefrom, and all of the plaintiff's lands are cut off from the straits by a range of mountains running east and west through the county. The

expense of building the necessary railroad to transport these logs over the mountains is very great, is beyond any present means of the plaintiff, and would not be justified by any present condition of the lumber market, or any which has heretofore existed on the Pacific Coast.

On the Straits of Fuca, however, and immediately adjoining tide water there lie fine bodies of fir, spruce, cedar and hemlock timber, which can readily be logged to the Straits at the present time; extensive logging operations have for many years been carried on and are now being carried on in this portion of Clallam County lying immediately upon the straits (p. 17).

In assessing the timber lands the assessing officers had divided them into zones or districts, assessing all timber lands lying in one district at the same valuation per thousand feet. These zones were laid off without reference to the real value of the timber lands within them, and without regard to any elements which would go to make up any uniformity of value and without regard to the system of cruises which the county had made and adopted some six years previously on its timber lands, but were wholly arbitrary, unjust and unlawful and resulted in the assessment of plaintiff's timber lands and other interior timber lands at a valuation much greater in proportion to their real value, than the timber lands lying along the straits

tributary to tide water and operating railroads and presently marketable (pp. 6-11).

That this discrimination against the plaintiff's lands and in favor of the straits lands and other timber lands being now operated was designed to force the plaintiff and other owners of idle timber lands to cut and operate, for the reasons previously alleged.

It is charged that it had been for some years the custom, practiced throughout the State of Washington by assessors and taxing boards, to assess property at less than its actual and full value; the custom in most of the counties being to assess property at from 35 to 50 per cent of its true value, which custom has been acquiesced in by the State Board of Equalization. That the assessing officers of Clallam County proclaim and pretend that for the year 1913 they assessed the assessable property within the county and equalized the same upon the basis of 53 per cent of its true and fair value in money, but in truth lands and other property at Port Angeles were assessed and equalized at not to exceed 10 to 20 per cent; the farming lands and other properties situated in the east end of the county at not to exceed 25 to 30 per cent, and personal property at from 10 to 15 per cent; while the timber lands of the interior were assessed and equalized at sums greatly in excess of 53 per cent, and plaintiff's lands, being in the interior, at nearly 83 per

cent of their true and fair value in money (pp. 11, 16).

It was further charged that under the Statutes of Washington, Section 9112 of Volume III, Remington & Ballinger's Codes, it was provided that all property shall be assessed at not to exceed 50 per cent of its true and fair value in money (p. 20).

It is charged that the plaintiff had appeared before the County Board of Equalization at its session in 1912, as well as in 1913, and had protested against the amount and manner of the assessment of its lands, but to no avail; that the review by the Board of Equalization of the assessment roll was ostensible and specious only, the members of the board having already combined and conspired with the assessor to make the unjust and unequal assessment, upon the basis and for the fraudulent purposes hereinbefore alleged; that said protests were arbitrarily overruled by the board (p. 22).

It is alleged that the true and fair value in money of the plaintiff's lands at the time of their assessment did not exceed $2,050,000, and that under the custom followed by the taxing officers in respect to other classes of property, and under the law of the state, its lands should not have been valued for taxation at a sum greater than $1,025,000, but that the taxing officers of the county in disregard of the law and for the fraudulent purposes aforementioned had

valued these lands at a sum exceeding by at least $686,505 the 50 per cent of their true and fair value in money (p. 20).

That the taxes so levied for the year 1913 against the plaintiff's lands aggregated $50,049.59, whereas had such taxes been levied upon the true and fair value in money of said lands, the same would not have exceeded $30,000; so that by the fraudulent and unlawful practices of the assessing officers complained of, there were unlawfully imposed upon these lands described in a schedule attached to the bill, taxes for the year 1913 to the amount of at least $20,049.59 in excess of all taxes which might be lawfully imposed on them (p. 21).

That on May 27, 1914, the plaintiff had tendered to the county treasurer the sum of $30,000 in payment of its taxes and had tendered and paid the same into court, and offered to pay any further sum that might be found just by the court (p. 24).

It is further alleged by the bill that this method of assessment of plaintiff's lands is in violation of Section 2, Article 7 of the Constitution of the State of Washington, and of Section 1, Article 7, providing for uniformity of taxation, and is in defiance of the 14th Amendment of the Constitution of the United States, as denying the plaintiff equal protec-

tion of the law and depriving it of its property without due process of law (pp. 25-26).

It is set out that it is the duty of the treasurer under the state law, having received the moneys so taxed, to pay the same in certain defined proportions, to the various road, bridge and other funds, to the City of Port Angeles and to the State of Washington, to recover back which payments this plaintiff would have to resort to a multiplicity of suits, and unless it obtained its remedy in this suit could not recover back from the state, and plaintiff would suffer great and irreparable injury, and that plaintiff is remediless at law and relievable only in equity (Bill XXXI-A, p. 81), and unless the treasurer was restrained he will by law proceed to issue delinquent certificates against these lands for the ultimate sale thereof, which would cloud the title to the lands, and which said lands are vacant and unoccupied (p. 23).

The bill prays that the taxes unlawfully assessed upon the plaintiff's lands be canceled and set aside, or the excess thereof over the amount of $30,000 tendered by plaintiff, or the excess over such amount as the court finds to be just and lawful; and that the county and its treasurer be enjoined from enforcing the unlawful tax by the sale of plaintiff's lands or otherwise; and for general relief (pp. 26-28).

The defendants moved to dismiss this bill for want of equity, laches and acquiescence of the plaintiff, and because of the alleged existence of a plain, speedy and adequate remedy at law under the statutes of the state (Record p. 47).

This motion was heard by the court upon the merits and denied (Record p. 48).

The plaintiff, on December 9, 1914, filed an amended bill, which was, however, in all respects substantially similar to the original bill, except for a more accurate statement of the run of timber and acreage of plaintiff's lands in certain zones (Stipulation, Record, pp. 79 to 82).

The defendants thereupon filed an answer to the amended bill (Record pp. 51 to 56), to which the plaintiff directed a motion to strike certain portions thereof and to make more definite and certain. This motion being allowed, defendants filed an Amended Answer to the Amended Bill (Record pp. 58 to 79).

This Amended Answer is substantially as follows:

The allegations of the bill as to jurisdictional matters, corporate existence of plaintiff and defendant and official capacity of defendants, are admitted, as likewise the ownership, acreage and geographical location of the plaintiff's timber lands (Record, pp. 58, 59).

It is admitted that most of the privately owned

lands in the county have been cruised and the cruises adopted by the county, and that the assessing and equalizing officers claim to have assessed and equalized the timber lands upon the basis of said cruises and estimates (Record p. 59, par. VI).

It is admitted that the timber lands have been divided into zones or districts for the purpose of assessment, but denied that these have been formed arbitrarily, unlawfully or unreasonably or without regard to the true and fair value in money of the timber on the lands in the various zones, or in any other manner than fairly, impartially and as the result of the honest judgment of the assessing officers formed upon full information after careful inquiry and investigation.

The defendants admit generally the geographical location of the zones, as plead by the plaintiff, with reference to the county boundaries and with reference to each other. They admit the plaintiff's ownership of acreage of land and stumpage of timber in the various zones, to the amount and extent claimed in the bill, and that the lands in these zones were valued in the amounts and taxed in the amounts as claimed in the bill; but deny the remoteness of plaintiff's lands from the outlets, and the non-existence of harbors on the Pacific Ocean in Jefferson or Clallam County, through which the plaintiff's timber might be brought to market.

They deny that a range of mountains separates the plaintiff's lands or the Solduc Valley from the Straits (Record pp. 60 to 63, pars. VII to XII A).

They deny the alleged existence of the custom and practice by the assessors and taxing boards of assessing property at from 35 to 50 per cent of its true value, or the recognition of such practice and acquiescence therein by the State Board of Equalization.

They deny "That the assessor of Clallam County gives out and pretends that for the year 1913 he assessed taxable property within Clallam County upon the basis of 53 per cent of its true and fair value in money, or upon any other or different basis than that provided by the laws of the State of Washington, at the time the assessments for the years 1912 and 1913 were made; deny that the members of the County Board of Equalization give out and pretend that they equalized and approved assessments upon taxable property within said county upon the basis alleged in said paragraph, or upon any other or different basis than that provided by the laws of the State of Washington at the time the assessments for the years 1912 and 1913 were made; admit that the interior timber lands in said county, including the lands owned by the plaintiff, were and are valued in the year 1913 for purposes of taxation at sums in excess of 53 per cent of the true and fair value thereof in money; deny

that other properties in said county, real and personal, were valued at sums less than 53 per cent of the true and fair value thereof in money; deny that the plaintiff was discriminated against grossly, or intentionally, or at all, by the assessing officers of Clallam County in the matter of assessment and taxation of its lands for the year 1913." (Record pp. 63, 64, par. XIII).

They admit that the valuations placed by the assessing officers of Clallam County upon the plaintiff's lands for the purpose of taxation for the year 1913 amount to the figures set forth in the bill, but deny that the true and fair value in money of said lands did not exceed the sum of $2,050,000 in the year 1913; deny that the assessment of plaintiff's lands for that year was made upon the basis of 83½ per cent, or upon any other or different basis than the true and fair value in money of the property assessed. Deny that no other property in Clallam County, except the timber lands owned by the plaintiff and certain other timber lands similarly situated, were assessed in the year 1913 at so great a proportion of their true and fair value in money and deny that the assessment upon the lands of the plaintiff or upon any other lands or property in the county, was in pursuance of any combination or conspiracy between the assessor of Clallam County and other members of the County

Board of Equalization as alleged in the bill, or at all (Record p. 64, par. XIV).

They admit the distribution of the taxable property in Clallam County, substantially as alleged by the bill, namely, the timbered property in the western part of the county, the urban property and population in the town of Port Angeles and agricultural lands and the farming communities in the eastern part of the county, and the voting power of the county as in the eastern part thereof (Record p. 65, par. XV).

They admit the election of the assessing officers of Clallam County by the voters in Port Angeles and the eastern part of the county by reason of a preponderance of these votes, but deny any combination or concert of these officers for any improper purpose whatever, and deny that the assessment roll of 1913 did not represent the judgment of the assessor or that it was the result of any combination or conspiracy; deny that the roll is approved as a mere matter of course, or that no fair hearing is to be had upon it on an appeal, or that the plaintiff was refused a hearing before the board in 1910. They admit the composition of the County Board of Equalization of Clallam County and the residence of the constituent members thereof as alleged by the bill, but deny any unlawful combination or concert on their part (Record p. 66, par. XVI).

They deny that the lots and other property situated in Port Angeles are valued upon the assessment roll as equalized for the years complained of at not to exceed 10 to 20 per cent of their true and fair value in money, and that the farming lands and other properties situated in the east end are valued upon said rolls at not to exceed 25 to 30 per cent of their true and fair value, and that personal property within the county was valued by the assessing officers at not to exceed 10 to 15 per cent of its true and fair value (Record pp. 66, 67).

They deny that the plaintiff's lands are wholly destitute of facilities for transportation and that it is impossible to bring the timber therefrom into the market; deny that the plaintiff's lands are as distant from the Straits of Fuca as stated in the bill or that the lands are cut off from the straits by a range of mountains or that it is impossible to bring the timber from said lands except by transportation across the range of mountains; and deny that the transportation of plaintiff's timber by building a railroad or otherwise would be at so great an expense as to be prohibitive under the present condition of the lumber market.

They deny generally and specifically the allegations of a combination or of discrimination on the part of the assessing and equalizing officers and that the plaintiff's lands were assessed or taxed in any

sum greater than was legally and honestly proper and due, and deny any discrimination in favor of one class of property over another, or of property in one part of the county over that of another (Record pp. 70, 71).

They admit the ownership of the lands by the plaintiff and that the same are vacant and unoccupied. (XVIII-A, p. 72.)

They admit the duties of the treasurer of Clallam County with reference to the disposition of taxes collected, as stated in the bill, but deny that if plaintiff instituted suit to recover back taxes paid by it, it would be obliged to bring suit against each one of the taxing bodies therein mentioned, and deny the consequent necessity for a multiplicity of suits, or that the portion of the taxes going to the State of Washington could not be collected back, or that repayment from the town of Port Angeles would not cover costs and other items referred to, or that the plaintiff would thereby be subject to great and irreparable injury or that the plaintiff would not have a complete, adequate or any remedy at law.

They admit the duties of the treasurer of Clallam County with reference to the issuance of certificates of delinquency against plaintiffs lands as alleged, but deny that this constitutes a cloud thereon. (Record p. 72, par. XXVIII B.)

They admit the tender as plead by the plaintiff, but deny that the amount so tendered is equal to the taxes due; they deny that the assessment of plaintiff's lands was in violation of the provisions of the Constitution of the State of Washington, or of the Federal Constitution, as plead by plaintiff's bill; and deny that the plaintiff is remediless at common law, or is relievable only in a court of equity, as alleged in the bill. (Record pp. 72, 73.)

And as further affirmative defenses, the defendants plead as follows: (Record pp. 73 to 79.)

I.

That the true and fair value in money of timber and timbered lands is dependent, among other factors, upon the character and quality or grade of timber, the thickness of the stand of timber or quantity per acre or upon a given tract, the topography of the ground upon which the timber stands, the presence of water for use in camps, logging engines and locomotives, the probability of fires, the size and contiguity of the tracts of land, large tracts or contiguous tracts constituting practically solid bodies of land containing sufficiently large quantities of timber to constitute profitable logging enterprises being commercially more valuable per acre or per M. feet than smaller or isolated tracts not sufficient in size to warrant the con-

struction of roads, railroads, camps and other facilities necessary to the removal of the timber.

The lands of the plaintiff, referred to in its amended bill of complaint herein, consist of large and practically solid bodies, bearing timber of valuable character, of exceptionally high grade and quality and of thick and heavy stand, and constitute desirable, advantageous and profitable logging enterprises from an operating standpoint, making the same proportionately more valuable than smaller or isolated tracts of timbered lands in the same localities, or otherwise similar in character to the lands of the plaintiff.

II.

That on or about the year 1908 the assessing officers of Clallam County caused to be employed experienced, capable and competent timber cruisers to make, and who did make, full, complete and detailed cruises and estimates of the character, quality and quantity of the timber standing upon the various legal subdivisions of land in said county. All of the timbered lands in said county in private ownership, including the lands of the plaintiff, have now been so cruised and platted into tracts or zones, and detailed reports and estimates of such cruises made and filed in the office of the county assessor of said county respecting the same. These reports, estimates and plats, taking into due consideration the factors of value

hereinabove set forth, and also the availability, ease or difficulty of logging, and physical characteristics of the lands, together with such other information with reference to agricultural possibilities of the lands, the presence of mineral deposits and other similar factors of value as the assessing officers were able to obtain upon independent investigation, were and have been consulted and used by such officers to assist in ascertaining and determining the value of said lands for the purposes of assessment and taxation, and such facts, plats, estimates, reports, data and other information, with due attention to geographical location, availability, physical characteristics of the ground, and other elements influencing the values of timber and timbered lands, as hereinabove set forth, were carefully considered by such officers in making the assessments referred to in the plaintiff's amended bill of complaint herein.

The assessments thus made, and as hereinafter referred to, were not arbitrary, capricious, unlawful, unreasonable, inequitable, disproportionate, or the result of any combination or conspiracy whatsoever, as alleged in the plaintiff's amended bill of complaint herein, or at all, but were the results of the honest, sincere, conscientious, mature and deliberate judgment and belief of the assessing and equalizing officers of said county formed upon and after full and careful

investigation of all the facts and circumstances surrounding said lands and affecting their values, as hereinabove set forth and a full, free, and fair hearing as required by law.

III.

That by the laws of the State of Washington in force and effect at the time the assessments for the years 1912 and 1913 complained of in plaintiff's said amended bill of complaint were made, and prior thereto, as hereinafter set forth, it was and is provided:

(Laws of 1897, Chapter LXXI.)

§1. That all real and personal property now existing, or that shall be hereafter created or brought into this state, shall be subject to assessment and taxation upon equalized valuations thereof, fixed with reference thereto on the first day of March at twelve o'clock meridian, in each and every year in which the same shall be listed, and

§2. That real property for the purposes of taxation shall be construed to be the land itself, and all buildings, structures and improvements, or other fixtures of whatsoever kind thereon, and all rights and privileges thereto belonging or in any wise appertaining, and all quarries and fossils in and under the same, which the law defines, or the courts may interpret, declare and hold to be real property, for the purposes of taxation, and

§6. That all real property in this state subject to taxation shall be listed and assessed under the provisions of this act in the year 1900 and biennially thereafter on every even numbered year with reference to its value on the first day of March preceding the assessment, and that all real estate subject to taxation shall be listed by the assessor each year in the detailed and assessment list and in each odd numbered year the valuation of each tract for taxation shall be the same as the valuation thereof as equalized by the County Board of Equalization in the preceding year, and

§42. That all property shall be assessed at its true and fair value in money; that the assessor shall value each article or description of property by itself, and at such sum or price as he believes the same to be fairly worth in money at the time such assessment is made; that in assessing any tract or lot of real property, the value of the land, exclusive of improvements, shall be determined; in valuing any property on which there is a coal or other mine, or stone or other quarry, the same shall be valued at such price as such property, including the mine or quarry, would sell at a fair voluntary sale for cash.

IV.

That the assessment for the year 1913, complained of in the plaintiff's amended bill of complaint, was

the assessed and equalized value of the plaintiff's lands for the year 1912, upon which the plaintiff paid all taxes levied and assessed without protest; that the assessments of the lands of the plaintiff, described in its said amended bill of complaint, based upon the cruises of timbered lands in said county, as herein set forth, began and were made in the year 1910, and were used and consulted and adopted in 1911 and 1912, and have continued ever since; that the plaintiff, as alleged in its said amended bill of complaint herein, paid without protest all of the taxes levied upon its said lands for the years 1910, 1911 and 1912.

V.

That the methods and bases upon which, and the laws of the State of Washington under which, the assessments of timbered lands in Clallam County, including the lands of the plaintiff, have been made since the year 1910, have at all times since that date been known to and acquiesced in by the plaintiff.

VI.

That under the laws of the State of Washington all taxes for state, county, municipal and other purposes are levied in specific sums and charged directly to the respective counties of said state; the rate per centum necessary to raise the taxes so levied in dollars and cents is computed and ascertained by the

county assessor of each county; that after taxes are thus levied, neither the county nor the property therein can be relieved of the duty of the payment of such taxes; that deficiencies owing to a reduction in the amount of taxes to be paid by any property owner or taxpayer, or to a failure to collect taxes for any reason, are by the laws of said state required to be added to, made up and collected under future assessments and levies, all of which is known to the plaintiff.

That the lands of the plaintiff, as admitted by the allegations of its amended bill of complaint herein, are not assessed or taxed at any greater or higher value or rate than other timbered lands in said county of similar character or similarly situated to the lands of the plaintiff, and upon which the taxes and assessments have been paid by the owners thereof.

That under the laws of the State of Washington, county boards and officials are prohibited and are without authority to remit or grant refunds of taxes paid, all of which is known to the plaintiff herein; that plaintiff neglected and delayed to take proper or any steps or to bring any suit or other proceeding to correct the alleged inequitable assessments referred to in its said amended bill of complaint herein, until after the larger portion of the taxes levied upon other lands similar in character and similarly located to the

lands of the plaintiff had been paid, and if relief as prayed for in the plaintiff's said amended bill of complaint is granted, other owners of property similar in character and similarly situated to the lands of the plaintiff in said county, will have been for the year 1913, and in the future will be, compelled to pay an unjust and unfair proportion of the taxes levied upon property in said county.

VII.

That by reason of the premises, and the facts and circumstances hereinabove recited, the plaintiff has been and is guilty of laches, and is precluded and estopped to question or deny the legality, fairness or correctness of the assessment and levy of taxes upon its said lands for the year 1913, and it cannot, in equity or good conscience, now be heard to complain thereof.

SECOND AFFIRMATIVE DEFENSE.

And for a second and further affirmative defense to the cause of action set forth in the plaintiff's amended bill of complaint herein, the defendants allege:

I.

That they hereby refer to paragraphs I, II, III and IV of their first and further affirmative defense hereinabove set forth, and by such reference adopt the

same and make them a part of this second affirmative defense.

II.

That Section 9112 of Volume 3 of Remington & Ballinger's Annotated Codes and Statutes of Washington was not, and did not become, the law of the State of Washington until on and after the 12th day of June, 1913, subsequent to the time when the assessment of the lands of the plaintiff complained of in said amended bill of complaint was made, and therefore did not govern or apply to the said assessment of the plaintiff's lands.

Upon these pleadings, that is, the amended bill and amended answer to amended bill, the parties went to trial, upon the testimony of witnesses and proofs made before Hon. E. E. Cushman, Judge, sitting in equity:

This cause, together with the other three causes, Nos. 2906, 2907 and 2908, were consolidated for trial, tried, argued and submitted together. On January 22, 1916, Judge Cushman handed down a memorandum decision set forth in the Record, pp. 792-826, of cause 2905, holding substantially that the plaintiffs had failed to sustain the charges of actual fraud or conspiracy on the part of the assessing and taxing

officers of Clallam County or such arbitrary, unlawful or discriminative acts as to entitle them to relief and ordering the cases dismissed. (Pp. 792-826.)

In pursuance whereof a separate decree was rendered and entered in each case on February 3, 1916.

The decree in this case, No. 2905, provided for a credit by the County of Clallam upon the taxes levied upon the plaintiff's lands, in the sum of $29,400, to be apportioned amongst said lands in the manner set out in the decree; for dismissal of the suit with prejudice and a judgment for costs (Record pp. 826 to 828). This matter of credit arose in the following manner:

Plaintiff had paid into court the amount of its tender, $30,000 (Record pp. 49, 50) on November 7, 1914. This sum less the commission to the clerk of the District Court, $600, was, on stipulation of the parties, paid over to the County of Clallam and receipted for as a payment pro tanto without prejudice to the contention of either party (Record pp. 49, 50), hence the above credit.

Within thirty days of the entry of the decree, to-wit: on March 3, 1916, the plaintiff served upon the defendants and filed in the District Court its petition to rehear (Record, pp. 831, 832).

At this same term this petition was entertained

by the court, argued and submitted April 18, 1916. (Record p. 832).

On May 15, 1916, an order was entered denying this petition to rehear (Record p. 934).

Thereupon this plaintiff appealed from the decree, obtaining allowance therefor, and perfecting the same with cost bond on October 27, 1916 (Record pp. 843-845), upon the following assignments of error then filed (Record pp. 837 to 843).

ASSIGNMENTS OF ERROR.

I.

Because the court overruled the objection of the plaintiff to the following question asked by the defendants' counsel on cross-examination of the witness, Thomas Aldwell, a witness for the plaintiffs on the value of the Olympia Power Company's plant:

"Do you know what the general impression in Port Angeles and other places was concerning your dam at that time?"

To this plaintiff objected. The objection was overruled, and the witness answered (plaintiff reserving and being allowed an exception).

"I think around Port Angeles they were very optimistic."

"Q. (By defendants' counsel). In other words

the general impression was that your dam and power site was a failure up there?"

To this plaintiff objected as being incompetent, irrelevant and immaterial. The objection was overruled, an exception taken and allowed by the court.

To which question the witness answered substantially that the general impression was that the dam would not hold.

II.

Because the court overruled the objection of the plaintiff to the following question asked by the defendants' counsel on cross-examination of the witness Aldwell, a witness for the plaintiff, as to the value of town lots in Port Angeles in March of 1913 and 1914:

The witness was asked whether he was not willing to sell some fifty or sixty thousand dollars' worth of Port Angeles property that he had for double its assessed value, to which the plaintiff objected as incompetent. The objection was overruled and an exception allowed. The witness answered that he would sell the property at double its assessed value.

This holding of the court was error.

III.

Because the court erred in admitting the testi-

mony of the defendants' witness, C. M. Lauridsen, under the following circumstances:

The witness Lauridsen was called by the defendants as an expert upon the value of real estate in Port Angeles and was asked to point out upon a memorandum or tabulation of certain lots what ones he said he would sell on the first of March, 1914, for their assessed value. This was objected to by the plaintiff on the ground that it was incompetent, irrelevant and not evidence of the market value of the property. This objection was overruled by the court, an exception taken by plaintiff and allowed by the court.

The witness answered that the property described was upon the last two sheets of this memorandum or tabulation of lots, being defendants' Exhibit 29.

II.

Because the court overruled the objection of the plaintiffs to the following question put by defendants' counsel to their own witness, C. M. Lauridsen, who was being examined as an expert upon the value of real property in the town of Port Angeles:

"Q. That property, according to Mr. Ware's testimony, was worth $6,000 on the first of March, 1914. Will you state what you paid for it?"

"A. I paid $2,500 on the 13th of March of that same year."

To which ruling the plaintiff excepted and its exception was allowed by the court.

III.

Because the court overruled the objection of the plaintiffs to the following question put by the defendants to their witness, C. M. Lauridsen:

"Q. State the facts about the purchase of Lot 18 in Block 54 and Lots 7 and 14 in Block 172."

To which the witness answered:

"Lot 18 in Block 51 I bought in January for $300." Lot 7 and Lot 14 in Block 172 the witness says he purchased for $175.

To which ruling the plaintiff excepted and its exception was allowed by the court.

IV.

Because the court erred in sustaining the exception of the defendants to the following question put by the plaintiffs to one of the defendants, Clifford L. Babcock:

"Q. Again in section 18 of your answer you say 'Deny that the lands and other properties situated at Port Angeles and subject to taxation and valuation

upon the assessment rolls as equalized for such years, were valued at not to exceed 10 to 20 per cent of their true and fair value in money.' Could you state then what you had in mind at that time as the rate at which they were assessed?"

To which ruling the plaintiff excepted and its exception was allowed by the court.

V.

Because the court, after the conclusion of all the evidence, permitted the defendants to amend their amended answer, in the following particulars, to-iwt:

(a) In paragraph XIII of their first amended answer the defendants had denied the existence of the practice amongst assessors of the various counties, and particularly Clallam County, of assessing property at from 35 to 50 per cent of its true value, and had denied the recognition of such custom or practice by the State Board of Equalization.

In said second amended answer they "Admit the practice by assessors and taxing boards of the custom therein referred to and admit the pursuit of such custom by the county assessors and its recognition and acquiescence by the State Board of Equalization," meaning thereby the custom of county assessors of assessing property at from 35 to 50 per cent of its true value.

(b) In their former answer they had denied "that the assessor of Clallam County gives out and pretends that for the year 1913 he assessed taxable property within Clallam County upon the basis of 53 per cent of its true and fair value in money, *or upon any other or different basis than that provided by the laws of the State of Washington at the time the assessment for the years 1912 and 1913 were made.*"

In their second amended answer they omit all of that portion above in italics.

(c) In their first amended answer, paragraph XIII, they plead as follows:

> "Admit that the interior timber lands in said county, including the lands owned by the plaintiff, were and are valued in the year 1913 for the purpose of taxation, at sums in excess of 53 per cent of the true and fair value thereof in money."

In their second amended answer they deny this allegation.

To this amendment plaintiff objected at the time, but said objection was overruled and an exception allowed by the court.

VI.

Because the court allowed the defendants, over the objection of the plaintiff then made at the con-

clusion of the evidence, to amend their answer in the following particulars:

(a) In their first amended answer, the defendants had alleged in paragraph XIV thereof the following:

> "Deny that said assessment for the year 1914 was made upon the basis of 83½ per cent *or upon any other or different basis than the true and fair value in money of all property assessed.*"

Whereas the second amended answer contains the same denial, omitting, however, the words above in *italics.*

Plaintiff reserved an exception to this amendment at the time, which was allowed by the court.

(b) In their first amended answer, in paragraph XXI thereof, they alleged: "That in the zones abutting upon the Straits of Fuca there lie fine bodies of fir, spruce, cedar and hemlock timber which can readily be logged to the straits as stated," while in their second amended answer they *deny* that said timber can readily be logged to the straits as stated.

To this amendment and to the allowance thereof the plaintiff at the time reserved an exception, which was allowed by the court.

VII.

Because the court erred in decreeing that the

taxes for the year 1913 upon the real property of the plaintiff described in the complaint, being to-wit, in the sum of $50,049.59 (or in any sum in excess of $30,000.00) were legal and valid.

VIII.

The court erred in adjudging and decreeing the bill of the plaintiffs dismissed and a judgment against the plaintiffs for costs.

IX.

Because the court erred in failing to adjudge and decree that the just and equitable amount to be taxed to the plaintiff's lands set forth in its bill, was not in excess of $30,000.00 and that the plaintiff had tendered this amount, and that the County of Clallam and the treasurer thereof should be required to accept this amount in full payment for the taxes upon the property described in the bill of complaint, levied for the year 1913 and that the balance of the taxes levied upon said lands should be cancelled and the defendants enjoined from selling said lands for said taxes.

X.

Because the court erred in its decree in failing to find and decree that the taxes assessed and levied for the year 1913 against the lands of the plaintiff, in the sum of $50,049.59 were grossly in excess of the true and just assessment against said lands for said

year, and was the result of fraud and conspiracy on the part of the assessor and Board of Equalization of Clallam County.

XI.

Because the court erred in refusing to readjust and fix said assessment at a fair and just amount and permit the plaintiffs to pay said amount with the credit of $30,000.00 tendered by the plaintiff, and to cancel from said lands the balance of said taxes.

XII.

Because the court erred, under the evidence, in failing to eliminate the assessments on hemlock timber, ties and poles and in failing to cut down the amount of the tax levy, as provided in the decree, by at least the sum of $8,955.56.

XIII.

Because the evidence showed that the allegations of the complaint were true and that the allegations of the second amended answer were not true.

XIV.

Because the court erred in entering judgment that the plaintiff take nothing by this action and that the defendants go hence without day and recover their costs.

XV.

Because the court erred in not entering judgment for the plaintiff and against the defendants in accordance with the prayer of the complaint.

XVI.

Because the evidence showed that the plaintiff's lands set out in the bill of complaint were assessed by Clallam County for the year 1913 taxes, in the sum of $50,049.69, whereas a just and fair assessment of such lands did not exceed the sum of $30,000.00, and that this over-assessment was the result of fraudulent conspiracy and discrimination on the part of the assessing and taxing authorities of Clallam County as against the plaintiff's and other timber lands, and in favor of other classes of property in the said Clallam County, and that said fraudulent conspiracy had been carried on and persisted in by said officers for a number of years prior to the time of such assessment.

No. 2907.

CLALLAM LUMBER COMPANY, a Corporation,
Plaintiff-Appellant,

vs.

CLALLAM COUNTY and HERBERT H. WOOD, Treasurer,
Defendants-Appellees.

This cause involved the assessment of the same lands as in 2905, but for the year 1914, the lands being

assessed as of March 1, 1914, equalized October, 1914, and payable June 1, 1915.

Suit was commenced by bill filed in the district court, March 6, 1915.

The pleadings and proceedings were in all material particulars the same as in the cause No. 2905. The bill in this case corresponding to the amended bill in 2905 and the answer here to the amended answer to amended bill in the former case, save that for this year the assessed value of fir, spruce and cedar had been increased in all zones by 10 cents per thousand feet, hemlock by 5 cents per thousand in zones 2 and 5, otherwise unchanged. (See zone map, Exhibit A, also records 2907, pp. 6-10).

It is claimed in this case that the aggregate value of plaintiffs lands did not exceed $2,050,000, in the years 1912, 1913 and 1914; that they should not have been assessed at a valuation of over 50 per cent of this, or $1,025,000, the tax upon which would not have exceeded the sum of $25,466.00, whereas they were taxed $42,960.78, or an unlawful excess of $17,-494.78 (p. 21).

Tender of this amount, $25,466.00, was made, refused, and kept good, but not paid over to the county as in cause 2905 (p. 25).

Accordingly, the decree entered in this cause,

February 3, 1916, (Record p. 78) ordered the suit dismissed without credit for any payment.

The further proceedings in this as to petition to rehear, settlement of statement of facts (p. 85), and all other matters were the same, and appeal perfected at the same time as in 2905.

At Record (p. 76) appears the order of Hon. Wm. B. Gilbert, on stipulation of parties permitting the omission to send up and print the record of testimony and memorandum decision in this cause.

The assignments of error were the same as in case 2905 (Record pp. 86-90), save as to the excess of unlawful tax, which is set out in the following assignments:

IX.

Because the court erred in decreeing that the taxes for the year 1914 upon the real property of the plaintiff described in the complaint, being, to-wit: in the sum of $42,960.78 (or in any sum in excess of $30,000.00) were legal and valid.

X.

The court erred in adjudging and decreeing the bill of the plaintiff dismissed and a judgment against the plaintiff for costs.

XI.

Because the court erred in failing to adjudge and decree that the just and equitable amount to be taxed to the plaintiff's lands set forth in its bill, was not in excess of $25,466.00, and that the plaintiff had tendered this amount, and that the County of Clallam and the treasurer thereof should be required to accept this amount in full payment for the taxes upon the property described in the bill of complaint, levied for the year 1914, and that the balance of the taxes levied upon said lands should be cancelled and the defendants enjoined from selling said lands for said taxes.

XII.

Because the court erred in its decree in failing to find and decree that the taxes assessed and levied for the year 1914, against the lands of the plaintiff, in the sum of $42,960.78, were grossly in excess of the true and just assessment against said lands for said year, and was the result of fraud and conspiracy on the part of the assessor and Board of Equalization of Clallam County.

XIII.

Because the court erred in refusing to readjust and fix said assessment at a fair and just amount and permit the plaintiff to pay said amount with the

credit of $25,466.00 tendered by the palintiff, and to cancel from said lands the balance of said taxes.

XIV.

Because the court erred, under the evidence, in failing to eliminate the assessments on hemlock timber, ties and poles, and in failing to cut down the amount of the tax levy as provided in the decree by at least the sum of $7,335.34.

XV.

Because the evidence showed that the allegations of the complaint were true and that the allegations of the second amended answer were not true.

XVI.

Because the court erred in entering judgment that the plaintiff take nothing by this action and that the defendants go hence without day and recover their costs.

XVII.

Because the court erred in not entering judgment for the plaintiff and against the defendants in accordance with the prayer of the complaint.

XVIII.

Because the evidence showed that the plaintiff's lands set out in the bill of complaint were assessed by Clallam County for the year 1914 taxes in the sum

of $42,960.28, whereas the just and fair assessment of such lands did not exceed the sum of $26,466,00, and that this over-assessment was the result of fraudlent conspiracy and discrimination on the part of the assessing and taxing authorities of Clallam County as against the plaintiff and other timber lands, and in favor of other classes of property in the said Clallam County, and that said fraudulent conspiracy had been carried on and persisted in by said officers for a number of years prior to the time of such assessment.

No. 2906.

CHARLES H. RUDDOCK and TIMOTHY H. McCARTHY, *Plaintiffs and Appellants,*

vs.

CLALLAM COUNTY and CLIFFORD L. BABCOCK, Treasurer, *Defendants and Appellees.*

This cause challenged the assessment of lands for the taxes of 1913. The plaintiffs were each of them citizens and residents of the State of Luisiana. Their lands aggregated 7,941.06 acres, and were all situated in zone No. 2, shown in yellow on Exhibit A (zone map), or in shaded type on map A, attached to brief.

Suit was brought May 29, 1914.

The pleadings, issues and proceedings in this cause were the same as in case 2905, save that the

aggregate of assessment against these lands for 1913 was $479,990.00 (Record 2506 p. 8). It is claimed that the total assessable value of these lands March 1, 1912, did not exceed the sum of $550,000.00; that under the laws of the state and under the practice applied to all other property in the county they should not have been assessed at more than $275,000.00, but were assessed at 479,990.00, an excess of $204,990.00.

That this produced a tax of $15,809.00, as against the sum of $9,250.00, which should have been the maximum tax, thus making an illegal excess tax of $6,559.00. (Record p. 17).

The plaintiffs had tendered this sum, to-wit: $9,-250.00 to the county treasurer, May 28, 1914, and paid it into court (p. 19). Thereafter on stipulation of the parties and order of the court, this sum was paid over to the county without prejudice to the rights or contentions of the parties. (Pp. 61-63).

Decree was entered February 3, 1916, ordering the county to credit this sum of $9,065.00, being the tender paid in, less clerk's commission, toward the taxes on the plaintiffs lands for 1913 pro tanto, in the manner in the decree set out, and dismissing the cause.

The further proceedings in this case No. 2906 as to petition to rehear, settlement of statement of

facts and all other matters were the same, and appeal perfected at the same time as in case No. 2905 (Record pp. 69-83).

In Record p. 63, appears the order of Hon. Wm. B. Gilbert, on stipulation of the parties, permitting this cause to be heard on record of evidence printed in cause No. 2905.

The assignments of error were the same as in case No. 2905 (Record pp. 73-77), save as to the excess of unlawful tax, which is set out in the following assignments, to-wit:

VII.

Because the court erred in decreeing that the taxes for the year 1914 upon the real property of the plaintiffs described in the complaint, being, to-wit: in the sum of $15,809.00 (or in any sum in excess of $9,250.00) were legal and valid.

VIII.

The court erred in adjudging and decreeing the bill of the plaintiffs dismissed and a judgment against plaintiffs for costs.

IX.

Because the court erred in failing to adjudge and decree that the just and equitable amount to be taxed to the plaintiffs' lands set forth in their bill, was

not in excess of $9,250.00 and that the plaintiffs had tendered this amount, and that the County of Clallam and the treasurer thereof should be required to accept this amount in full payment for the taxes upon the property described in the bill of complaint, levied for the year 1913, and that the balance of the taxes levied upon said lands should be cancelled and the defendants enjoined from selling said lands for said taxes.

X.

Because the court erred in its decree in failing to find and decree that the taxes assessed and levied for the year 1913 against the lands of the plaintiffs, in the sum of $15,809.00, were grossly in excess of the true and just assessment against said lands for said year, and was the result of fraud and conspiracy on the part of the assessor and Board of Equalization of Clallam County.

XI.

Because the court erred in refusing to readjust and fix said assessment at a fair and just amount and permit the plaintiffs to pay said amount with the credit of $9,250.00, tendered by the plaintiffs, and to cancel from said lands the balance of said taxes.

XII.

Because the court erred, under the evidence, in

failing to eliminate the assessments on hemlock timber, ties and poles, and in failing to cut down the amount of the tax levy, as provided in the decree by at least the sum of $1,007.41.

XIII.

Because the evidence showed that the allegations of the amended complaint were true and that the allegations of the second amended answer were not true.

XIV.

Because the court erred in entering judgment that the plaintiffs take nothing by this action and that the defendants go hence without day and recover their costs.

XV.

Because the court erred in not entering judgment for the plaintiffs and against the defendants in accordance with the prayer of the amended complaint.

XVI.

Because the evidence showed that the plaintiffs' lands set out in the bill of complaint, were assessed by Clallam County for the year 1913 taxes, in the sum of $15,809.00, whereas a just and fair assessment of such lands did not exceed the sum of $9,250.00, and that this over-assessment was the result of fraudulent conspiracy and discrimination on the part of the assessing and taxing authorities of Clallam County as

against the plaintiffs' and other timber lands, and in favor of all other classes of property in Clallam County, and that said fraudulent conspiracy had been carried on for a number of years prior to the time of such assessment.

No. 2908.

CHARLES H. RUDDOCK and TIMOTHY McCARTHY, *Plaintiffs-Appellants,*

vs.

CLALLAM COUNTY and HERBERT H. WOOD, Treasurer, *Defendants-Appellees.*

This cause concerns the taxes upon the same lands as in the last case, but for the year 1914, the lands being assessed as of March 1, 1914, equalized October, 1914, and payable June 1, 1915.

Suit was commenced in the district court by suit filed March 6, 1915.

The pleadings and proceedings were in all material particulars the same as in the three preceding causes, the bill in this case corresponding to the amended bill in cause 2905, and the answer here to the amended answer to amended bill in 2905—save that for this year the assessed value of fir, spruce and cedar had been increased in this zone No. 2 from 70 cents per thousand feet to 80 cents, and the hemlock from 35

cents to 40 cents. (Exhibit A, zone 2) (Record p 6).

It is claimed in this case that while the aggregate valuation of plaintiff's lands did not exceed $550,-000.00 March 1, 1914, and that under the law of the state and the practice of the county with respect to other property, they should not have been assessed at more than 50 per cent of this value of $275,000.00, they had in fact been assessed at $561,395.00 (Record p. 8), being 102 per cent of their actual value; that the taxes should not have exceeded $6,905.00, but they did in fact amount to $14,095.00, being an unlawful excess of $7,190.16. (P. 17).

On February 24, 1915, the plaintiffs tendered this amount of $6,905.00 to the county treasurer, and upon its refusal has kept the tender good. (P. 19).

Accordingly, the decree entered in this case February 3, 1916 (p. 55), ordered the suit dismissed without credit for any payment made.

The further proceedings were taken in this case as to petition to rehear (pp. 59-62), settlement of statement of facts, order for submission on the record of evidence in cause No. 2905, as in the preceding cases Nos. 2906, 2907.

The assignments of error were the same as in the preceding cases (pp. 63-69), save as to the amount

of excess of unlawful tax, which is set out in the following assignments:

IX.

Because the court erred in decreeing that the taxes for the year 1914 upon the real property of the plaintiffs described in the complaint, being, to-wit: in the sum of $14,095.67 (or in any sum in excess of $6,905.00) were legal and valid.

X.

The court erred in adjudging and decreeing the bill of the plaintiffs dismissed and a judgment against the plaintiffs for costs.

XI.

Because the court erred in failing to adjudge and decree that the just and equitable amount to be taxed to the plaintiffs' lands set forth in their bill, was not in excess of $6,905.00, and that the plaintiffs had tendered this amount, and that the County of Clallam and the treasurer thereof should be required to accept this amount in full payment for the taxes upon the property described in the bill of complaint, levied for the year 1914, and that the balance of the taxes levied upon said lands should be cancelled and the defendants enjoined from selling said lands for said taxes.

XII.

Because the court erred in its decree in failing to find and decree that the taxes assessed and levied for the year 1914 against the lands of the plaintiffs, in the sum of $14,095.67 were grossly in excess of the true and just assessment against said lands for said year, and was the result of fraud and conspiracy on the part of the assessor and Board of Equalization of Clallam County.

XIII.

Because the court erred in refusing to readjust and fix said assessment at a fair and just amount and permit the plaintiffs to pay said amount with the credit of $6,905.00, tendered by the plaintiffs, and to cancel from said lands the balance of said taxes.

XIV.

Because the court erred under the evidence, in failing to eliminate the assessments on hemlock timber, ties and poles, and in failing to cut down the amount of the tax levy as provided in the decree by at least the sum of $892.79.

XV.

Because the evidence showed that the allegations of the complaint were true and that the allegations of the second amended answer were not true.

XVI.

Because the court erred in entering judgment that the plaintiffs take nothing by this action and that the defendants go hence without day and recover their costs.

XVII.

Because the court erred in not entering judgment for the plaintiffs and against the defendants in accordance with the prayer of the complaint.

XVIII.

Because the evidence showed that the plaintiffs' lands set out in the bill of complaint were assessed by Clallam County for the year 1914 taxes in the sum of $14,095.00, whereas the just and fair assessment of such lands did not exceed the sum of $6,905.00, and that this over-assessment was the result of fraudulent conspiracy and discrimination on the part of the assessing and taxing authorities of Clallam County as against the plaintiffs' and other timber lands, and in favor of other classes of property in the said Clallam County, and that said fraudulent conspiracy had been carried on and persisted in by said officers for a number of years prior to the time of such assessment.

ARGUMENT.

The suits were properly brought and rightly entertained in this Court.

The diversity of citizenship of the parties and requisite jurisdictional amount involved are plead and admitted.

I.

The suits were brought to prevent the enforcement of taxes on plaintiffs' lands, on the grounds that the same were intentionally and fraudulently overvalued by the assessing officers for purposes of taxation, as compared with other properties within the county.

The proceedings before the Board of Equalization were *quasi* judicial and the determination reached by it is properly reviewable in a direct proceeding in equity.

King County vs. Northern Pacific R. R. Co., 196 Fed. 323 (C. C. A., Ninth Circuit).
Washington Water Power Co. vs. Kootenai Co., 210 Fed. 867, 869 (C. C. A., Ninth Circuit).
Western Union Telegraph Co. vs. Gottlieb, 190 U. S. 412, 426, 427.
Cummings vs. National Bank, 101 U. S. 153.
Balfour vs. City of Portland, 28 Fed. 738.

The case of Singer Sewing Machine Co. vs. Benedict, 229 U. S. 481, might appear against our conten-

tion; but there, the action was brought to recover the whole of a void assessment, that part which it was claimed to be void being clearly separable from the tax upon the property returned by the corporation. The distinction between such a case and the one at bar is stated in Stanley vs. Supervisors of Albany, 121 U. S. 535, and reiterated in Western Union Tel. Co. vs. Gottleib, supra, in these words:

> "It is only where the assessment is wholly void, or void with respect to separable portions of the property, the amount collected on which is ascertainable, or where the assessment has been set aside as invalid, that an action will lie for the taxes paid or for a portion thereof. Overvaluation of property is not a ground of action at law for excess of taxes paid beyond what should have been levied upon a just valuation." (Page 549).

In some states it is expressly provided by statute, that the remedy for intentional and arbitrary discrimination in taxation should be found in a suit at law. There is no statute of the State of Washington which undertakes to impair the remedy which exists in equity in such cases as the suit at bar. Nor do we understand that a state statute could impair the remedy which exists on the equity side of the Federal Court. Ever since the decision in Payne vs. Hook, 7 Wall. 425, it has been well understood that equity jurisdiction and remedies conferred by the Constitution and statutes of the United States cannot be limited or

restrained by the State Legislature and are uniform throughout the different states of the Union.

To the same effect are:

Taylor vs. L. & N. R. Co., 88 Fed. 350, 358 to 359 (C. C. A. 6th Circuit).
Smyth vs. Ames, 169 U. S. 466 to 516.

Not only is there no statute in Washington which undertakes to impair the remedy in equity, but in the state courts in Washington it is held that an action lies in equity to enjoin the collection of a tax if it be shown that there is intentional and arbitrary discrimination against a particular class of property.

Spokane & Eastern Trust Co. vs. Spokane Co., 70 Wash. 48.
Savage vs. Pierce County, 68 Wash. 623.

The Washington statutes expressly recognize this remedy by way of injunction.

> Sec. 955: "Hereafter no action or proceeding shall be commenced or instituted in any court of this state to enjoin the sale of property for taxes or to enjoin the collection of any taxes, or for the recovery of any property sold for taxes. unless the person or corporation desiring to commence or institute such action or proceeding shall first pay, or cause to be paid, or shall tender to the officers entitled under the law to receive the same, all taxes, penalties, interest and costs justly due and unpaid from such person or corporation on the property sought to be sold or recovered."
>
> Sec. 956: "In all actions to enjoin the sale of any property for taxes, in all actions to enjoin

the collection of any taxes, and in all actions for the recovery of any property sold for taxes, the complainant must state and set forth specifically in his complaint the tax that is justly due with penalties, interest and costs, the taxes alleged to be illegal and point out the illegality thereof; that the taxes for that and for previous years have been paid; and when the action is for the recovery of lands or other property sold for taxes, against a person or corporation in possession thereof, that all taxes, penalties, interest and costs paid by the purchaser at the tax sale, his assignees or creditors, have been fully paid, or tendered and payment refused."

Remington & Ballinger's Codes and Statutes, Secs. 955-956.

But while the state courts cannot define the equity jurisdiction of the Federal courts, it is nevertheless declared that where the state courts have held that a suit in equity could be maintained in the courts of the state, the same suit can be maintained in the Federal court having jurisdiction in other respects.

Singer Sewing Machine Co. vs. Benedict, 229 U. S. 481.

In *Smyth vs. Ames,* 159 U. S. 466, it is said:

"One who is entitled to sue in the Federal Circuit Court may invoke its jurisdiction in equity whenever the established rules and principles of equity permit such a suit in that court. And he cannot be deprived of that right by reason of his being allowed to sue at law in the state court on the same cause of action. It is true that the enlargement of equitable rights arising from the statutes of the state may be administered by the Circuit Courts of the United States."

The same rule is recognized in:

Case of Broderick's will, 21 Wall. 503,
Cummings vs. Nat. Bank, 101 U. S. 153.

II.

Where it appears that the collection of the tax will cast a cloud upon the title of plaintiff to lands, or involve a multiplicity of suits, there exists the right to bring suit in equity to restrain the collection of the tax.

Gregg vs. Sanford (C. A. C.), 65 Fed., 151, 156, 157.
California & Oregon Land Co. vs. Gowen, (C. C.), 48 Fed. 771.
Taylor vs. L. & N. R. C., 88 Fed., 350, 358.
Raymond vs. Chicago Traction Co., 207 U. S., 20.
Cummings vs. National Bank, 101 U. S., 153, 157.
Benn vs. Chehalis Co., 11 Wash., 134, 136.

In *King Co. vs. Northern Pacific Railway Co.,* (C. C. A.), 196 Fed., 323, 325, it is said by Circuit Judge Gilbert:

> "We find no error in the ruling of the trial court that the case was of equitable cognizance.
>
> "It is not alleged here that there are any special grounds of equitable jurisdiction except the fact that the enforcement of the assessment would throw a cloud upon the title of the appellee's property. In *Ogden City vs. Armstrong,* 168 U. S. 224, 18 Sup. Ct. 98, 42 L. Ed. 444, the doctrine was reaffirmed that a court of equity will interfere to enjoin an illegal tax which will

create a cloud upon title to real property. Nor is the case one in which there is an adequate remedy at law. The contention that the appellee may pay the tax and thereafter recover it in an action at law does not suggest an adequate remedy, nor, indeed, any remedy at all as to a portion of the tax, for a portion of it goes to the state, and no action may be brought against the state to recover same.

Raymond vs. Chicago Traction Co., 207 U. S. 20."

In *Gregg vs. Sanford* (C. C. A.), 65 Fed., 151, 156-157, it is said by Circuit Judge Acheson:

"Preventive relief by injunction against an illegal tax which would cast a cloud upon the title to real estate is within the settled powers of a court of equity; and where a tax on its face appears to be valid, and evidence *aliunde* is necessary to show its invalidity, equity will interfere. Cooley, Tax'n., 542, 543; High Inj., §§524, 526. The books are replete with cases in which equity has interposed to prevent or cancel a cloud upon title to land arising from illegal tax assessments or sales thereunder, or from tax deeds, where the proceeding sought to be enjoined or set aside was *prima facie* valid, and it was necessary to prove extrinsic facts to show its illegality. * * *

"In all the decisions of the Supreme Court relating to the general subject of the appropriate relief against the collection of taxes illegally imposed, it is laid down as a proposition not to be doubted that, where the illegal tax is upon real estate, and would throw a cloud upon the plaintiff's title, the case comes under a recognized head of equity jurisdiction." (Citing *Dows vs. City of Chicago*, 11 Wall. 108, 110, and other cases).

In *Raymond, Treasurer of Cook County, Illinois,*

vs. Chicago Union Traction Company, 207 U. S. 20, 39-40, relief against excessive assessments, resulting in illegal discrimination, was granted in a court of equity, on the ground that a multiplicity of suits would be thereby avoided. It appeared that it was the duty of the collector, having received the money on his warrant, to pay the sum so received in the proportions designated in his tax books to the city treasurer of the City of Chicago, the county treasurer of the County of Cook, the treasurer of the Sanitary District, and other officers and authorities entitled to receive the same, and that if the plaintiff instituted suit to recover back the taxes so paid to the town or county collector he would be obliged to bring separate suits against each one of the taxing bodies receiving its proportionate share of the tax, thereby necessitating a multiplicity of suits, and that the proportion of the tax which would go to the State of Illinois could not be collected back by any proceeding whatsoever, and that if repayment could be compelled from the City of Chicago and other taxing bodies, such repayment would not cover the cost, including commissions deducted for the collection of the tax, and in that way it was averred that the plaintiff would be subject to great and irreparable injury, for which there was not a complete or adequate remedy at law.

The like showing is made in the suits at bar.

(See paragraph XXVIII-B of the amended bill in case 2905, Record p. 23).

The authorities also maintain that systematic, repeated and continuing violation of the Constitution or the law, to the injury of the plaintiff, like a continuing trespass, presents ample reason for an injunction against its continuance.

Wells, Fargo & Co. vs. Johnson (C. C. A.), 214 Fed., 180, 189.
Atchison, Topeka & S. F. Ry. vs. Sullivan, 173 Fed. (C. C. A.) 456, 471.
Raymond sv. Chicago Traction Co., 207 U. S., 20, 36.

III.

In Clallam County it is the uniform practice of the assessing officers to assess timber lands, especially those in the interior of the county, at a higher percentage of their true value than other property within the county. This is intentionally done. It violates the uniformity of taxation, which it is the purpose of the Constitution of Washington to secure, and is fraudulent and will be enjoined.

Andrews vs. King County, 1 Wash. St., 46.
Spokane & Eastern Trust Co. vs. Spokane County, 70 Wash. 48.
Savage vs. Pierce County, 68 Wash., 623.
Northern Pacific Ry. Co. vs. Pierce County, 77 Wash., 315.
Taylor vs. Louisville & Nashville R. C. Co. (C. C. A.), 88 Fed. 350.

Washington Water Power Co. vs. Kootenai County, (C. C. A. 9th Circuit), 210 Fed. 867.
First National Bank of Walla Walla vs. Hungate, 62 Fed. 548, 550.
Cummings vs. Bank, 101 U. S. 153.
Chicago B. & Q. R. R. vs. Board of Commissioners, (C. C. A.), 67 Fed. 411.
Railroad & Telephone Companies vs. Board of Equalization, (C. C.), 85 Fed. 302.
Lively vs. Railway Co., (C. C.), 120 S. W. 852; 102 Tex. 545, 558.
C. B. & Q. Co. vs. Commissioners of Atchison County, 54 Kan. 781.
Bank vs. Lyon County, 83 Kans. 376.
Semple vs. Langlade County, 75 Wis. 354.
Bureau County vs. Chicago,&c. R. R. Co., 44 Ill. 229.
Dundee Mortgage Trust Investment Company vs. Parrish, (C. C., before Judge Deady), 24 Fed., 197.
Merrill vs. Humphrey, 24 Mich., 170.

The defendants apparently claim that plaintiff's lands are not assessed at a higher rate than other interior timber lands, and that it is a matter of no moment that discriminations are made against plaintiff in favor of all property owners in Clallam County other than the owners of interior timber land. This appears from paragraph VI. of defendants' first affirmative defense, where it is said:

> "The lands of the plaintiff, as admitted by the allegations of its bill of complaint herein, are not assessed or taxed at any greater or higher value or rate than other timbered lands in said county of similar character or similarly situated to the lands of the plaintiff, and upon which the taxes

and assessments have been paid by the owners thereof."

This claim of opposing counsel we respectfully submit finds no support in either reason or authority.

Andrews vs. King County, 1 Wash. St., 46, 52.
Spokane & Eastern Trust Company vs. Spokane County, 70 Wash., 48, 49, 52.
Taylor vs. Louisville & N. R. Co., (C. C. A.), 88 Fed., 350, 364.

The Constitution of Washington provides:

"§1. All property in the state not exempt under the laws of the United States, or under this constitution, shall be taxed in proportion to its value, to be ascertained as provided by law."

"§2. The legislature shall provide by law a uniform and equal rate of assessment and taxation on all property in the state, according to its value in money, and shall prescribe such regulations by general law as shall secure a just valuation for taxation of all property, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property."

Remington & Ballinger's Annotated Codes and Statutes of Washington, Vol. 1, Art. 7, §§ 1 and 2.

Spokane & Eastern Trait Company vs. Spokane County, 70 Wash. 48, was an appeal from a judgment of the Superior Court of Spokane County sustaining demurrers to the complaint and dismissing an action to enjoin the collection of a tax. In the opinion of the court, by Justice Gose (pp. 49 and 52), it is said that the demurrers were rested and sustained upon the

ground that the complaint did not state facts sufficient to constitute a cause of action. The appellant contended that the assessment complained of was arbitrary, fraudulent and violative of the above quoted section 2, article 7, of the Constitution. With reference to this it is said:

> "As was said in *State ex rel. Wolfe vs. Parmenter,* 50 Wash. 164, 96 Pac. 1047, 19 L. R. A. (N. S.) 707: 'It is just as imperative that taxation shall be *uniform and equal upon all property* as it is that all property shall be taxed.' There is neither uniformity nor equality where all kinds of property save one are, intentionally and in pursuance of a fixed and definite policy, assessed at less than forty per cent of its full and fair value, whilst that class of property is intentionally assessed at sixty per cent of such value. The facts pleaded do not show an erroneous valuation or a difference in judgment as to a correct measure of value, but rather an intentional and arbitrary discrimination against a particular class of property. Such an arbitrary policy is vicious in principle, violative of the constitution, and operates as a constructive fraud upon the rights of the property holder discriminated against. In such cases equity will grant relief."

In *Taylor vs. Louisville & N. R. Co.* (C. C. A.), 88 Fed. 350, 364, in an opinion by Circuit Judge Taft, it is said:

> "The sole and manifest purpose of the constitution was to secure uniformity and equality of burden upon all the property in the state. As a means of doing so (conceding that defendant's construction is the correct one), it provided that the assessment should be according to its true

> value. It emphasized the object of the section by expressly providing that no species of property should be taxed higher than any other species. We have before us a case in which the complaining taxpayer, and other taxpayers owning the same species of property, are taxed at a higher rate than the owners of other species of property. This does not come about by legislative discrimination, but by the intentional and systematic disregard of the law by those charged with the duty of assessing all other species of property than that owned by complainant and its fellows of the same class. This is a flagrant violation of the clause of the constitution forbidding discrimination in taxation between different species of property."

The contention of defendants that plaintiff has no grievance because no discrimination is practiced against it which is not also practiced against other owners of interior timber lands, is a total misconception of the constitutional rights of the property owner as fixed by the decisions of the courts. It is precisely because this is not a sporadic or accidental case of discrimination against a single taxpayer, but that the rule of appraisement adopted by the assessing officers of Clallam County operates unequally on a large class of property owners within the county, that a court of equity intervenes to restrain the collection of the excessive tax.

Stanley vs. Supervisors, 121 U. S. 550.
Taylor vs. Louisville & N. R. Co (C. C. A.), 88 Fed. 350, 373-374.
Cummings vs. Bank, 101 U. S., 153.
Railroad & Telephone Companies vs. Board of

Equalizers (C. C.), 85 Fed. 302, 307.
C. B. & Q. Co. vs. Commissioners of Atchison County, 54 Kans., 781, 790-791.

This principle is clearly stated in *Stanley vs. Supervisors,* 121 U. S. 550, where it is said by Mr. Justice Field:

> "When the over-valuation of property has arisen from the adoption of a rule of appraisement which conflicts with a constitutional or statutory direction, and operates unequally not merely on a single individual but on a large class of individuals or corporations, a party aggrieved may resort to a court of equity to restrain the exaction of the excess, upon payment or tender of what is admitted to be due. This was the course pursued and approved in *Cummings vs. National Bank,* 101 U. S. 153."

Nor is it necessary, as a condition precedent to relief, that the plaintiff show an intent upon the part of the assessing officers to injure the plaintiff and the class of taxpayers to which it belongs.

Taylor vs. Louisville & Nashville R. R. Co. (C. C. A.), 88 Fed. 350, 372.
Atchison, &c., R. R. Co. vs. Sullivan (C. C. A.), 173 Fed. 456, 461.

The principle which controls in this discussion is stated by Circuit Judge Sanborn in the case last cited, in these words, (173 Fed., 461):

> "It was, and had been for many years, the rule and the settled policy and practice of these local taxing officers to violate the law and assess the taxable property in that county within their

jurisdiction at about one-third of its actual value. The assessor actually intended to assess the property he listed upon that basis. He testified, however, and the truth of this statement must be conceded, that he did not have any actual intent or purpose to impose an undue burden upon the complainant or upon railroad property. His acts, nevertheless, were in violation of the statute, their natural and inevitable effect was to diminish the burden of taxation upon the property within his jurisdiction and to increase it upon the railroad property, and, however innocent in actual intent he may have been, his acts were as injurious to the owners of railroad property as if he had actually intended to discriminate against them, and the law conclusively presumes that he intended the natural and inevitable effect of his deeds. It was not necessary to the complainant's cause of action that the assessor or the county commissioners should have had any actual intention to increase unduly the complainant's share of the burden of taxation. It was sufficient to sustain its cause that they intended to disregard the law, and that the natural and inevitable effect of that violation was the increase of its share of the burden."

IV.

And in such case as that mentioned in the preceding division III, the assessment of timber lands at a higher percentage of their true value than other property casts an unequal burden upon the timber lands, and the owners thereof are denied the guaranties of the Constitution, and the collection of the excess taxes may be enjoined at their suit, although their property is assessed at less than its actual value.

Andrews vs. King County, 1 Wash. St., 46, 51

State ex rel Oregon Railroad & Navigation Co. vs. Clausen, 63 Wash. 535, 542, 543, 544.
Savage vs. Pierce County, 68 id. 623
Spokane & Eastern Trust Co. vs. Spokane County, id. 48.
Spokane & Inland E. R. Co. vs. Spokane County, 82 Wash. 24.
Spokane & Inland E. R. Co. vs. Whitman County, 82 Wash. 696.
Taylor vs. Louisville & Nashville Railroad Co. (C. C. A. 6th Circuit), 88 Fed. 350.
Cummings vs. Bank, 101 U. S. 153.
Raymond vs. Chicago Traction Co., 207 U. S., 20, 36.
Atchison &c. Ry. Co. vs. Sullivan, (C. C. A.), 173 Fed. 456, 461.
Railroad & Telephone Companies vs. Board of Equalizers, (C. C.), 85 Fed., 302, 315.
Bank vs. Lyon County, 83 Kans., 376.
Board of Supervisors of Bureau County vs. Chicago, B. & Q. R. Co., 44 Ill., 229.
Randell vs. City of Bridgeport, 63 Conn., 321.

Andrews vs. King County, 1 Wash. St., 46, 51.

Judge Dunbar said:

"If A is the owner of property of the value of one thousand dollars, which is assessed at one thousand dollars, and B is the owner of property worth one thousand dollars, which is assessed at five hundred dollars, the practical result to A is the same as though B's property had been assessed at its value of one thousand dollars, and his property at an overvaluation, or at two thousand dollars. In either case the resulting injury is the same; he has been subjected to double the burden that B has, while actually possessing the same amount of property. The just principle of taxation is equally violated in both cases; and the constitutional mandate that 'all taxes shall be equal

> and uniform, and that the assessment shall be according to the value of the property' is equally ignored. And when such an abuse of official discretion affects a large class of individuals, it will be subject to the law's revision."

In *Spokane & Inland E. R. Co. vs. Spokane County,* 82 Wash. 24, it is held that the assessment of railroad property at 42.16 per cent of its valuation, while other property in the same county is assessed at 32 per cent of its value, so manifestly violates the constitutional requirement that taxation shall be uniform and equal upon all property, and shows such arbitrary discrimination against a particular class of property, as to operate as a constructive fraud, and afford grounds for the granting of equitable relief.

To the like effect is *Spokane & Eastern Trust Co. vs. Spokane County,* 70 Wash. 48, which is referred to in the preceding division of this brief.

V.

The assessments complained of are discriminatory and fraudulent. Collection, as threatened, of taxes on this fictitious basis would constitute a violation of the rights secured to plaintiff, not merely under the Constitution of Washington, but by the Fourteenth Amendment to the Constitution of the United States.

(a) The collection, as threatened, of taxes on this fictitious basis would deprive plaintiff of its property without due process of law.

Chicago Union Traction Co. vs. State Board of Equalization, (C. C.), 114 Fed., 557, 565, 566.
Raymond vs. Chicago Union Traction Co., 207 U. S., 20, 36.
Chicago Union Traction Co. vs. State Board of Equalization, supra.

This is a decision by Circuit Judge Grosscup, who says:

"Taxes are enforced contributions, levied by the state, upon the property of individuals, by virtue of its sovereignty, for the support of government, and for the public needs. The money thus taken, until taken, is, as much as real estate or chattels, property within the meaning of the Constitution of the United States; and the taking of such money is a taking of property, as much so, for instance, as the taking of private land for some public work authorized by some law of the State or of Congress.

"Due process of law, as applied to the cases under consideration, is the authorized procedure whereby the property of the individual can be taken by the state; it includes the initial authority to levy taxes; the purpose to which money thus raised is to be devoted; and the instrumentalities that distribute the burden upon the citizens. Ours is a government of laws, and not of individual officers, or of boards, or of men.

"Any substantial departure, therefore, in the collection of taxes, from the law, either as to the authority for a tax, or its purpose, or the provisions for the just distribution of its burdens, is a departure from due process of law; and the enforced collection of taxes, in the laying and distributing of which there is a substantial departure from law, is the depriving of a citizen of his property without due process of law. * * *

"The sum of all this, as applied to the cases under consideration, is that the reassessments complained of do not embody the real judgment of the board, in either the assessment or the equalization of the capital stock of complainants for the year 1900; and that in the absence of such real judgment, the threatened collection of taxes on the basis of the fictitious entry would be to deprive complainants of their property without due process of law."

(b) And it would constitute a denial to plaintiff of the equal protection of the laws, within the meaning of the Fourteenth Amendment to the Constitution of the United States.

Raymond vs. Chicago Traction Co., 207 U. S., 20, 36.
Railroad & Telephone Companies vs. Board of Equalizers, (C. C.), 85 Fed., 302.
Lively vs. M. K. & T. R. R. Co., 102 Tex., 454.
Louisville & Nashville R. R. Co. vs. Bosworth, (D. C.), 209 Fed., 380, 452-453.
Central R. R. Co. of New Jersey vs. Jersey City, (D. C.), 199 Fed., 237.
County of Santa Clara vs. Southern Pacific R. R. Co., 18 Fed., 385, 398-399.

In *Raymond vs. Chicago Traction Co.,* 207 U. S., 20, 36, the Supreme Court of the United States, in an opinion by Mr. Justice Peckham, approved the following language taken from *Louisville Trust Co. vs. Stone,* (C. C. A.), 107 Fed., 305:

"It may be conceded that, if the allegations of the bill are made out, there exists, in respect to the property of complainant and others similarly situated, a systematic, intentional, and illegal un-

dervaluation of other property by taxing officers of the state, which necessarily effects an unjust discrimination against the property of which the plaintiff is the owner, and a bill in equity will lie to restrain such illegal discrimination, and that in such cases Federal jurisdiction will arise because of the equal protection of the laws guaranteed by the Fourteenth Amendment."

VI.

As preliminary to a review of the facts in this case and our endeavor to fit them to the principles of law above announced, we cite the Court's attention to the provisions of the statute of the State of Washington as bearing upon the method and practice of assessing and taxing property.

The following citations are from Remington & Ballinger's Code:

Sec. 9091. PROPERTY SUBJECT TO TAXATION.

"All real and personal property now existing or that shall be hereafter created or brought into this state, shall be subject to assessment and taxation for the support of the state government, and for county, school, municipal or such other purposes as shall be designated by law, upon equalized valuations thereof fixed with reference thereto on the first day of March, at 12 meridian, in each and every year in which the same shall be listed, except such property as shall be expressly exempted therefrom by the provisions of law."

Sec 9092. REALTY DEFINED.

> "Real property for the purpose of taxation shall be construed to include the land itself, whether laid out in town lots or otherwise, and all buildings, structures and improvements or other fixtures of whatsoever kind thereon, and all rights and privileges thereto belonging, or in anywise appertaining, and all quarries and fossils in and under the same which the law defines or the courts may interpret, declare and hold to be real property under the letter, spirit, intent and meaning of the law, for purposes of taxation."

In the case of *France vs. Deep River Logging Co.,* 79 Wash. 339, the Supreme Court of the State of Washington held that standing timber upon land in the same title of ownership, was a part of the land and was taxable with the land as real property.

In the present case there was no severance of the ownership of the standing timber from the ownership of the lands, but both the land and timber were taxed in the name of the same owner and this ownership was conceded in the pleadings and throughout the trial, and the lands and timber were, as a matter of fact, assessed together as real property.

Sec. 9101. REALTY LISTED BIENNIALLY. PERSONALTY ANNUALLY.

> "The real property in this state subject to taxation shall be listed and assessed under the provisions of this chapter in the year 1900 and biennially thereafter, on every even numbered year, with reference to its value on the first day of

March preceding the assessment. All personal property in this state subject to taxation shall be listed and assessed every year with reference to its value on the first day of March preceding the assessment. * * *

"Provided further, that all real estate subject to taxation shall be listed by the assessor each year in the detailed and assessed list, and in each odd numbered year the valuation of each tract for taxation shall be the same as the valuation thereof as equalized by the County Board of Equalization in the preceding year."

Sec. 9102. WHEN ASSESSOR TO BEGIN WORK.

"The assessor shall begin the preliminary work for each assessment not later than the first day of February of each year in all counties from the first to the sixteenth class, inclusive; and not later than the first day of March in all other counties in the state. He shall also complete the duties of listing and placing valuations on all property by May thirty-first of each even numbered year, and in the following manner, to-wit: He shall actually determine, as nearly as practicable, the true and fair value of each tract, or lot of real property listed for taxation and shall enter the value thereof, including the value of all improvements and structures thereon, opposite each description of property. He shall make an alphabetical list of the names of all persons in his county liable to assessment of personal property, and require each person to make a correct list and statement of such property according to the prescribed form, which statement and list shall be subscribed and sworn to by the person listing the property, and the assessor shall thereupon determine the value of the property included in such statement and enter the same in assessment books opposite

the name of the party assessed; and in making such entry in his assessment list he shall give the name and postoffice address of the party listing the property, and if the party reside in a city the assessor shall give the street and number or other brief description of his residence or place of business."

Sec. 9112. ASSESSMENT AT TRUE VALUE.

"All property shall be assessed at its true and fair value in money. In determining the true and fair value of real or personal property, the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation; nor shall he adopt as a criterion of value the price for which the said property would sell at auction, or at a forced sale, or in the aggregate with all the property in the town or district; but he shall value each article or description of property by itself and at such sum or price as he believes the same to be fairly worth in money at the time such assessment is made. The true cash value of property shall be that value at which the property would be taken in payment of a just debt from a solvent debtor. In assessing any tract or lot of real property, the value of the land exclusive of improvements shall be determined; also, the value of all improvements and structures thereon, and the aggregate value of the property, including all structures and other improvements, excluding the value of crops growing on cultivated lands. In valuing any real property on which there is a coal or other mine, or stone or other quarry, the same shall be valued at such a price as such property, including the mine or quarry, would sell at a fair, voluntary sale for cash. * * *"

Sec. 9113. REALTY, HOW LISTED.

"The assessor shall list all real property according to the largest legal subdivision as near as practicable. The assessor shall make out in the jlat and description book in numerical order a complete list of all lands or lots subject to taxation, showing the names and owners, if to him known, and if unknown, so stated; the number of acres and lots or parts of lots included in each description of property and the value per acre or lot; * * *

"And provided further that the board of county commissioners of any county may by order direct that the property be listed numerically according to lots and blocks or section, township and range, in the smallest platted or government subdivision, and when so listed the value of each block, lot or tract, the value of the improvements thereon and the total value thereof including improvements thereon, shall be extended after the description of each lot, block or tract, which last extension shall be in the column headed 'Total value of each tract, lot or block of land assessed with improvements as returned by the assessor, * * *"

Sec. 9121.

Personal property is listed and assessed in the county where the owner or agent resides.

Sec. 9134. BANK STOCK, WHERE LISTED, VALUATION THEREOF.

"All the shares of stock in banks, whether of issue or not, existing by authority of the United States or of the state, and located within the state, shall be assessed to the owners thereof in the cities or towns where such banks are located,

and not elsewhere, in the assessment of all state, county and municipal taxes imposed and levied in such place, whether such owner is a resident of said city or town or not; and all such shares shall be assessed at their full and fair value in money on the first day of March in each year, first deducting therefrom the proportionate part of the assessed value of the real estate belonging to the bank. And the persons or corporations who appear from the records of the banks to be the owners of shares at the close of the business day next preceding the first day of March in each year shall be taken and deemed to be the owners thereof for the purposes of this section."

Sec. 9200. COUNTY BOARD OF EQUALIZATION. DUTIES.

"The county commissioners, the county assessor and the county treasurer or a majority of them, shall form a board for the equalization of the assessment of the property of the county. They shall meet in open session for this purpose annually on the first Monday in August at the office of the county assessor, who shall act as clerk of said board, and, having each taken an oath fairly and impartially to perform their duties as members of such board, they shall examine and compare the returns of the assessment of the property of the county and proceed to equalize the same, so that each tract or lot of real property and each article or class of personal property shall be entered on the assessment list at its true and fair value, according to the measure of value used by the county assessor in such assessment year, and subject to the following rules:

First. They shall raise the valuation of each tract or lot of real property which in their opinion is returned below its true and fair value to such price or sum as they believe to be the true and

fair value thereof, after at least five days' notice shall have been given in writing to the owner or agent.

Second. They shall reduce the valuation of each tract or lot which in their opinion is returned above its true and fair value to such price or sum as they believe to be the true and fair value thereof.

Third. They shall raise the valuation of each class of personal property which in their opinion is returned below its true and fair value to such price or sum as they believe to be the true and fair value thereof, and they shall raise the aggregate value of the personal property of each individual whenever they believe that such aggregate value is less than the true valuation of the taxable personal property possessed by such individual to such sum or amount as they believe to be the true value thereof, after at least five days' notice shall have been given in writing to the owner or agent thereof.

Fourth. They shall, upon complaint in writing of any party aggrieved, being a non-resident of the county in which his property is assessed, reduce the valuation of each class of personal property enumerated in section 9128 aforesaid, which in their opinion is returned above its true and fair value, to such price or sum as they believe to be the true and fair value thereof; and, upon like complaint, they shall reduce the aggregate valuation of the personal property of such individuals, who, in their opinion, have been assessed at too large a sum, to such sum or amount as they believe was the true and fair value of his personal property.

The county assessor shall keep an accurate journal or record of the proceedings and orders of said board in a book kept for that purpose, showing the facts and evidence upon which their action is based, and the said record shall be pub-

lished the same as other proceedings of county commissioners, and shall make a true record of the changes of the descriptions and assessed values ordered by the county board of equalization. Having corrected the real and personal assessment rolls in accordance with the changes made by the said county board of equalization, he shall make duplicate abstracts of such corrected values, one copy of which shall be retained in his office, and one copy forwarded to the state auditor on or before the first Monday in September next following the meeting of the county board of equalization.

The county board of equalization may continue in session and adjourn from time to time during three weeks, and shall remain in session not less than three days, commencing on the first Monday in August: Provided, that no taxes except special taxes shall be extended upon the tax-rolls until the property valuations are equalized by the state board of equalization for the purpose of raising the state revenue.

The county assessor shall make a record of all errors in descriptions, double assessments, or manifest errors in assessment appearing on the assessment-list at the time of the extension of the rolls, and after duly verifying the same, file said record with the county board of equalization on the third Monday in November next succeeding the annual meeting of the county board of equalization. The county board of equalization shall reconvene on such day for the sole purpose of considering such errors in description, double assessments, or manifest errors appearing on the assessment-list at the time of the extension of the rolls, and shall proceed to correct the same, but said board shall have no authority to change the assessed valuation of any person, or to reduce the aggregate amount of the assessed valuation of the taxable property of the county, except only in so far as the same may be affected by the correc-

tions ordered based on the record submitted by the county assessor."

Sec. 9212. TAXES, HOW LEVIED.

"The county taxes shall be levied or voted in specific amounts and the rates per centum shall be determined from the amount of property as equalized by the county board of equalization each year, except such general taxes as may be definitely fixed by law.

"The county taxes shall be levied by the county commissioners between the first and second Mondays of October of each year. * * *"

Sec. 9213. TIME AND RATE OF LEVY.

"For the purpose of raising a revenue for the state, county indebtedness, county current expense, school, road and other purposes, the board shall, at said October session, levy a tax on all txable property in the county, as shown by the assessment roll, sufficient for such purposes. * * *"

Sec. 9219.

"The county treasurer shall be the receiver and collector of all taxes extended upon the tax books of the county, whether levied for state, county, school, bridge, road, municipal or other purposes, and also of all fines, forfeitures or penalties received by any person or officer for the use of his county. * * *"

All taxes are made payable on or before the 31st day of May in each year, after which date they become delinquent and bear interest at the rate of 15 per cent per annum from date of delinquency. Provided, however, that if one-half of the taxes are paid on or

before the 31st day of May, then the time for payment of the balance is extended to the 30th day of November following.

Secs. 9230 and 9235.

All taxes are made a lien upon the real property upon which they are imposed or assessed, dating from the first day of March in the year in which they are levied.

Section 9252 makes it the duty of the county treasurer twelve months after taxes charged against real property are delinquent, to make out and issue certificates of delinquency against such property on which taxes have not been paid, to purchasers thereof on payment of taxes and interest, and enacts that

> "A guaranty of the county or municipality to which the tax is due that if for any irregularity of the taxing officers this certificate be void, then such county or municipality will repay the holder the sum paid thereon with interest at the rate of six per cent per annum from the date of its issuance: Provided that nothing herein contained shall prevent the running of interest during the said period of twelve months from the date of delinquency, at the rate of interest provided by law on delinquent taxes."

Section 9254 provides for the foreclosure of the lien of this certificate of delinquency after the expiration of three years from the original date of delinquency.

From the foregoing it will be apparent that under the system of taxation prevailing in this state, the taxes are assessed upon all taxable property according to its value as of March first—say of 1912; the roll is equalized by the Board of Equalization in October, 1912, and the taxes become payable upon real property not until May 31, 1913.

With respect to real property taxes, by reason of the biennial assessment in the even numbered years the taxes upon real property for the year 1913 are based upon the assessment of 1912; thus the valuation of property for 1913 taxes is referred to its value as of March first, 1912, there being no new assessment, and it is payable May 31, 1914.

The taxes for the year 1914 being in an even numbered year are upon assessment based upon the value as of March 1, 1914, as equalized in October, 1914, and is payable on or before May 31, 1915.

In the cases at bar, that of *Clallam Lumber Company vs. Clallam County and Babcock, its treasurer,* being No. 2905, and that of *Ruddock and McCarthy vs. Clallam County and Babcock, its treasurer,* No. 2906, deal with the taxes of 1913, which were assessed as of March 1, 1912, and equalized in October, 1912; and the cases of *Clallam Lumber Company vs. Clallam*

County and Wood, treasurer, No. 2907, and of *Ruddock and McCarthy vs. Clallam County and Wood, treasurer,* No. 2908, deal with the taxes of the year 1914, which were based upon the assessment and values as of March 1, 1914, equalized in October, 1914. The bills in these cases being based upon alleged fraud and conspiracy of the defendants in their official capacities, both actual and constructive fraud, require a review of the entire case *de novo,* to ascertain whether the lower court did not err in not finding the allegations of the bill clearly supported by the evidence as a whole and granting the relief prayed for. The assignments of error are therefore necessarily broad. We will take them up not in numerical order as outlined in the record on appeal, but in the order of their importance and perhaps more logical sequence.

The errors assigned in all four cases, as we have before stated, are the same, save that the gross amount of taxes and unjust and unlawful excess in the several cases differ in amount only because the acreage and run of timber varies in the four cases, but the principle is alike in all and the ground of error is the same and will be differentiated by us later.

We will take the liberty, therefore, of citing the Assignments of Error as taken from the case of *Clallam Lumber Company vs. Clallam County and Babcock, treasurer,* No. 2905, indicating hereafter any

differences. We refer, in the first place, to the following Assignments of Error:

> No. VI. "Because the court erred in decreeing that taxes for the year 1913 upon the real property of the plaintiff described in the complaint, being to-wit, in the sum of $50,049.59, or in any sum in excess of $30,000, were legal and valid."
>
> No. VIII. "The court erred in decreeing the Bill of the plaintiff dismissed and judgment against the plaintiff for costs."
>
> No. IX. "Because the court erred in failing to adjudge and decree that the just and equitable amount to be taxed to the plaintiff's lands set forth in its Bill, was not in excess of $30,000 and that the plaintiff had tendered this amount, and that the County of Clallam and the Treasurer thereof should be required to accept this amount in full payment of taxes upon the property described in the Bill of Complaint levied for the year 1913, and that the balance of the taxes levied upon said lands should be cancelled and the defendants enjoined from selling said lands for said taxes."
>
> No. X. "Because the court erred in its decree in failing to find and decree that the taxes assessed and levied for the year 1913 against the lands of the plaintiff, in the sum of $50,049.59, were grossly in excess of the true and just assessment against said lands for said year, and was the result of fraud and conspiracy on the part of the Assessor and Board of Equalization of Clallam County."
>
> No. XI. "Because the court erred in refusing to readjust and fix said assessment at a fair and just amount and permit the plaintiff to pay said amount with the credit of $30,000 tendered by

the plaintiff and to cancel from said lands the balance of said taxes."

No. XVI. "Because the evidence showed that the plaintiff's lands set out in the Bill of Complaint were assessed by Clallam County for the year 1913 taxes in the sum of $50,049.69, whereas a just and fair assessment for such lands did not exceed the sum of $30,000 and this over-assessment was the result of fraudulent conspiracy and discrimination on the part of the assessing and taxing authorities of Clallam County as against the plaintiff and other timber lands in favor of other classes of property in said Clallam County, and that said fraudulent conspiracy had been carried on and participated in by said officers for a number of years prior to the time of such assessment."

VII.

We will first take up the practice of the assessor in dividing these timber lands into zones for the purposes of assessment and valuation.

This Court will be aided in this investigation by reference to the Plaintiff's Exhibit A, a map of plaintiff's lands, showing the zone assessment. For convenient reference by the Court we have had this map photographed and reproduced in diminished size and attached to this brief at its end, to which we beg to refer. It would also assist the Court to have before it a large map of the whole of Clallam County introduced by the defendants, being Defendants' Exhibit 25.

Referring to the zone map, Exhibit A (attached), the lands marked in black are the lands of the Clallam

Lumber Company, involved in Cause No. 2905 as to the taxes for 1913, and in Cause No. 2907 for the taxes for 1914. The shaded lands are the lands of Ruddock and McCarthy, being those involved in Cause No. 2906 as affected by the taxes of 1913 and in Cause No. 2908 as affected by the taxes of 1914, whereas upon the original zone map A the lands of the Clallam Lumber Company are in red, those of Ruddock and McCarthy in yellow.

The heavy dark lines on the map (attached) represent the boundaries of the zones. The numerals in smaller type (for instance just above the most northerly zone the figures 80-40) represent the assessment of timber lands in this particular zone under the 1912 (1913) roll, the 80 meaning 80 cents per thousand feet of fir, spruce and cedar, and the 40 meaning 40 cents per thousand feet for hemlock; and the numerals in larger type, 90 and 40, indicate the assessment under the 1914 roll, being 90 cents per thousand feet for fir, spruce and cedar, and 40 cents per thousand feet for hemlock.

Following now the Record in Cause No. 2905: In paragraph VI of the bill (Record p. 6) it is alleged that the timber lands of Clallam County have been assessed by division into certain zones or districts, which the assessing officers have arbitrarily and unreasonably and unlawfully laid off. Referring to De-

fendants' Amended Answer, paragraph VI (Record p. 593). The use of this zone system is admitted, but it is denied that they are arbitrarily, unreasonably or unlawfully laid off.

In paragraph VII of the bill (Record p. 6) is described the most northerly of these zones (being marked I on the plat, Exhibit A), substantially as follows:

This zone abuts immediately upon the Straits of Fuca and extends east and west along the straits for a distance of approximately 65 miles and extends from the straits into the interior a distance varying approximately from 3 to 8 miles. Within this zone are included those timber lands which of all timber lands within the county are of the greatest value, not merely because the timber thereon is of excellent quality, but particularly because of the location thereof, the same being situated upon tide water or adjacent thereto and thus rendered immediately accessible to the markets of the world. In this zone the timber is assessed for the year 1913 (this being the same as the 1912 assessment) as follows: Fir, spruce and cedar at 80 cents per thousand feet; hemlock at 40 cents per thousand feet.

The defendants in their amended answer (Record p. 60, par. VII) admit the geographical location of this zone I, but deny its area as alleged by the plaintiff,

and admit the figures at which the lands were assessed as charged.

None of the plaintiffs own any timber in this zone.

The Bill, page 7, paragraph VIII, described the zone marked 2 on the plat as situated in the western part of Clallam County, no part thereof lying nearer to the straits than approximately 4 to 6 miles, and no lands within this zone owned by the plaintiff lying nearer to the straits than approximately 9 miles and the great body of the plaintiff's lands in this zone lying a much greater distance therefrom. This zone is irregular in form and extends southerly until it reaches the line of Jefferson County, a distance of approximately 30 miles from the Straits of Fuca. There are no harbors upon the Pacific Coast within the counties of Clallam or Jefferson at or through which the timber on the plaintiff's lands in this zone could be brought to market.

The lands in this zone were assessed for the year 1913 at the rate of 70 cents per thousand feet upon fir, spruce and cedar and 35 cents per thousand feet upon hemlock. In this zone the plaintiff owns 18,707.84 acres of land, the timber upon which amounts to 1,420,241½ M. feet of all sorts, upon which was placed by the assessor for the year 1913 a valuation of $814,922.50.

It is further alleged that all the plaintiff's lands in this zone are separated from the Straits of Fuca by a range of mountains. These lands were assessed for the year 1914 at 80 cents per thousand feet for fir, spruce and cedar, and 40 cents per thousand for hemlock, the aggregate sum of the assessment being for this year $941,455 (Record, Case 2907, p. 8).

The defendants in their amended answer, page 60, paragraph VII, admit the geographical location of this zone, but deny that no part of it lies nearer to the straits than 4 to 6 miles or that none of the plaintiff's lands within this zone lie nearer to the straits than approximately 9 miles, or that the great body of the lands of the plaintiff lie more distant therefrom. They admit the form and extent of the zone as alleged; they deny that there are no harbors upon the Pacific Ocean within the counties of Clallam or Jefferson at or through which the timber on the lands of the plaintiff might or could be brought to market; deny that the plaintiff's lands in this zone are separated from the Straits of Fuca by a range of mountains. They admit, however, the acreage, the run of timber claimed by plaintiff in this zone and the rate of assessment as alleged. (See also Record 2907, p. 52.)

Zone No. 3 is described in paragraph IX of the Bill (being the zone farthest east on Exhibit A). This includes Lake Crescent and certain lands con-

tiguous thereto and about a township of lands lying west of Lake Crescent. Plaintiff owns in this zone 3,207 acres and the timber thereon, according to the county cruise, aggregates 136,856¾ M. feet of all sorts. This timber is valued for assessment for 1913 on fir, spruce and cedar at 70 cents per M. feet, on hemlock at 30 cents per M.; total valuation, $88,730. None of the plaintiff's lands in this zone lie nearer to the straits than 6 miles and it is charged that between these lands and the straits there is a high and practically impassable mountain range, occupying the northern portion of Township 30 North, Range 10 West, which has never been surveyed. For the year 1914 these lands were assessed for fir, spruce and cedar at 80 cents per thousand feet, and for hemlock at 30 cents per thousand; aggregate assessed value, $96,565.

The defendants in paragraph IX of their answer (Record p. 61) admit the allegation as to the location and extent of Zone No. 3; admit the acreage claimed by the plaintiff and aggregate assessed valuation and rate of assessment as alleged, but deny that none of the lands within this zone lie nearer to the straits than 6 miles, and deny the existence between these lands and the straits of a high and practically impassable mountain range.

Zone No. 4 (being the south central zone) is

described in the Bill, paragraph X, as lying in the south central part of the county, the north line thereof being approximately 8 to 15 miles from the straits and the zone extending upon the south to the line of Jefferson County, some 27 miles distant from the straits None of the plaintiff's lands in this zone lie nearer to the straits than 8 miles and some of its lands are 21 miles distant from the straits, the plaintiff's lands extending to the edge of the unsurveyed lands in the main Olympic Mountains. Plaintiff owns in this zone some 18,580.36 acres, the timber on which amounts to 1,110,302¼ M. feet. These lands were valued for assessment for 1913 at $588,350.00, the timber being assessed at the rate of 60 cents per thousand feet for fir, spruce and cedar, and 30 cents per thousand for hemlock. For the year 1914 these lands were assessed at $654,700, the fir, spruce and cedar being assessed at 70 cents per thousand feet, and hemlock at 30 cents per thousand feet.

The defendants admit the location and extent of this zone as alleged by the bill; admit the area of plaintiff's lands, the gross amount of taxation and valuation of the timber for assessment as alleged (Cause No. 2905, p. 62; Cause No. 2907, p. 53).

Another zone described in paragraph XI of the Bill (Record p. 9, being Zone No. 5 on the plat, Exhibit A) is described as situated north of the Solduc

Valley and on the westerly slope of the aforementioned range of mountains which separates this valley and all of plaintiff's lands from the straits. It is alleged that this zone is composed in great part of rough and mountainous lands containing a considerable quantity of burnt timber. Plaintiff has in this zone 798½ acres, upon which the timber aggregates 64,738½ M. feet. For 1913 plaintiff's lands in this zone were assessed at 40 cents per thousand feet for fir, spruce and cedar, and 20 cents per thousand feet for hemlock, aggregating the value of $21,745. (Record 2905, p. 10). For 1914 these lands were assessed at 50 cents per thousand feet for fir, spruce and cedar, and 25 cents for hemlock, aggregating an assessment value of $29,945 (Record 2907, p. 10). It is charged that none of the plaintiff's lands in this zone lie nearer to the straits than 8 miles.

The defendants answering this (Record 2905 p. 62) admit the geographical location of the zone; deny that a range of mountains separates the Solduc Valley and plaintiff's lands from the straits; deny that this zone is composed of rough and mountainous lands and that there is comparatively a considerable quantity of burnt timber within the same. Deny that none of the plaintiff's lands in this zone lie nearer to the straits than 8 miles, but admit the area of the lands, rate of assessment of the timber and aggregate assessed

value thereof as alleged. (Record 2905, p. 62; Record 2907, p. 54).

Another zone (No. 6 on the plat) is described by plaintiff as lying along the line of Jefferson County practically midway between the easterly and westerly ends of Clallam County and extending from the south line of Jefferson County north until it touches the north line of Township 29. This contains but a small acreage of privately owned lands bordering on the unsurveyed government lands in the Forest Reserve. Plaintiff's lands in this zone lie approximately 9 miles from the straits. It is alleged that for the year 1913 the timber in this zone was assessed for fir, spruce and cedar at 40 cents per thousand feet, and hemlock at 20 cents per thousand feet, aggregating 4,052 M. feet upon the 80 acres of the plaintiff (Record 2905, p. 10).

The defendants (Record 2905, p. 63) deny that none of the plaintiff's lands in this zone lie nearer to the straits than 9 miles, but admit all the other allegations of paragraph XII except that the zone was arbitrarily, unreasonably or unlawfully set off.

All of the lands of Ruddock and McCarthy involved in Causes Nos. 2906 and 2908 lie wholly within Zone No. 2 as shown on the plat (Exhibit A). The area of these lands was said to be 7,941.6 acres, the run of timber 1,230,041½ M. feet and the aggregate

assessed value for taxation $479,990. The rate of valuation of the timber per thousand feet was the same for both 1913 and 1914 as in the cases of the Clallam Lumber Company, and in fact all other lands in this Zone 2, namely 70 cents for fir, spruce and cedar in 1913 and 80 cents for 1914, and for hemlock 35 cents for 1913 and 40 cents for 1914. Cause 2906, page 6. Admitted by defendants' answer (Record 2906, p. 44).

In apology for the bulk of the Record of Evidence in this case we respectfully state to the Court that owing to the fact that actual fraud was an issue in this case and the proof of it lay largely in statements and interviews of parties who were called as witnesses, it has seemed necessary to put their testimony in, not in narrative form wholly but largely in their own words, that the Court may measure the weight of it in its various shades and meanings. On other branches of the case this same course was further made necessary by reason of the large amount of descriptive material, geographical and commercial locations and relations of properties, which could not otherwise be made intelligible to the Court. As it is, the Record was cut down more than two-thirds of its original bulk.

All of the original exhibits have been sent up to this Court under order of the District Court. This

became necessary because a large part of them were in the shape of maps, books and photographs which could not be conveniently reproduced or copied. These exhibits are all referred to in the index to the Record of Cause No. 2905, with descriptions to identify them and the page of the Record given where they were introduced.

This suggestion may assist the Court in referring to these exhibits.

The topography and physical characteristics of the area covered by these zones is given in the testimony of T. A. Rixon, an engineer, at pages 101 to 111 of the Record. A reference to Plaintiff's Exhibit A, the zone map (photographic copy attached to brief), and to Defendants' Exhibit 25, being a large map of Clallam County, will aid the Court in understanding this testimony. We also refer to topographical map, plaintiff's Exhibits B and H.

Rixon has lived some eight years in the heart of Clallam County. From 1908 to 1913, substantially, he worked for the Federal government, making topographical maps, estimates of timber and establishing boundaries of reserves in Clallam County. In this connection he had roughly cruised all of Clallam County (page 101). He is now employed by the plaintiffs in

looking after and cruising their lands. He was county engineer of Clallam County for the construction of its highways for eighteen months.

Describing Zone 1, the witness says (page 102): From the east end of the county, back to Twin Rivers, there is a gradually sloping bench, sloping to the straits for the approximate width of three miles. Back from the straits this bench is elevated about 100 feet high on the shore line and at six miles back from the shore about 500 feet high. (Twin Rivers, flowing into the straits, is located just north of the west end of Lake Crescent).

From Twin Rivers west there is a broken country, gradually sloping from the straits with numerous deep ridges and canyons, these ridges and canyons running northeasterly. The elevation in this portion runs up as high as 2,000 feet. South of the line in red, marking the south boundary of Zone 1, the country is mountainous. Referring to Zone — (this is evidently Zone 1), lying immediately south of Zone 1, a portion of it is not very broken. It has a few hills in it but is fairly level ground, but south of it are high mountains going all along. Where the broken line is shown on the map is the termination of the surveys, the land included in the blank spaces being too mountainous to survey. This land extends westerly to an elevation of about 2,000 feet through to the Hoko River (the

Hoko River is seen flowing northerly through the western portion of Zone 2 and Zone 1 into the straits).

There is a low pass at the Hoko and then the elevation climbs up to about 2,000 feet just east of the Hoko and then the elevation runs in a southeasterly direction with the white in blank space on the map (this being in Zone 2). That broken country extends over easterly to Lake Crescent and follows around to the south side of Lake Crescent to Lake Sutherland. This elevation from Lake Crescent to the Hoko runs from about 2,500 to 4,200 feet. It is very abrupt from the south side. The north side, sloping to the north, is more gradual. The summit of this high elevation is about 9 miles back from the straits, lying north of the plaintiffs' lands.

The land to the south of this broken elevation along the Solduc River that comes up through the plaintiffs' timber is a valley varying from a mile to two miles wide, a level plateau, running at an elevation of about 250 feet at the lower end to 750 feet at the upper end in a distance of 20 miles.

(The Solduc River will be observed flowing generally from about west of Lake Crescent westerly through the plaintiffs' lands in Zones 4, 6 and 2, and southwesterly in the latter zone through the Ruddock and McCarthy lands).

To the south of the Solduc River comes the Calawa River. That country is very broken by mountains and ridges. The ridges run north and south, approximately running some 2,500 feet high. There is a high mountainous ridge about 3,000 feet high between the valleys of the Solduc and Calawa Rivers, following the main divide of the Solduc and Calawa Rivers up on the divide of the Hoko, climbing up to a height of some 6,000 feet eventually.

The lands in Zone 4 are considerably rougher than in Zone 2. Where the lands colored in yellow lie, the lands of Ruddock and McCarthy, is a level bench. West of these lands is rolling country. To the west and northwest of the lands of the Clallam Lumber Company it is mountainous, the mountains heading off to the Hoko River. The height of the summit along the Solduc Valley and Lake Crescent is 1,125 feet (Record p. 104).

The witness describes possible railroad routes from this timber to deep water as follows:

One route by way of Dickey River over to the west, following Dickey River up to Dickey Lake and across the divide, and a channel about 250 feet high above the water, following down the Hoko River and out to the straits and out to Clallam Bay. The length of this would be about 50 miles.

Another route would be by way of Beaver Creek. Beaver Creek comes into the Solduc in the southwest corner of Township 30 North, Range 12 West; following the creek northeasterly across Burnt Mountain and then down to the Pysht River (this is the river just north of Zone 5). The highest elevation here would be 1,000 feet; this railroad would be 25 miles long.

Another route would be from the Solduc River to Bear Creek, thence to the divide, then down to Deep Creek, swing around the mountains to Twin Rivers and come out on to the grade at Port Angeles, about half way between the Lyre and Twin Rivers. This would be in the neighborhood of sixty miles and the highest summit to be surmounted would be 1,100 feet.

Another outlet would be to follow down the Coast to Grays Harbor a distance of 75 miles to connect with the nearest railroad. The highest elevation to be encountered by this road would be some 200 feet (Record p. 104).

This witness, asked as to the relative quality and value of the timber lands in the straits zone, No. 1, and the other zones, says (Record p. 107): From the Pysht River over to the west boundary of the zone the timber is large, old growth fir; magnificent, old growth fir that would run 65 to 70 per cent No. 1 logs. The timber stands on good logging ground. He considers the Merrill & Ring timber, lying about the

mouth of the Pysht River, and the Goodyear timber, lying about Clallam Bay, being in Zone No. 1, far superior to the Clallam Lumber Company's tracts (being in other zones), the difference being $1.25 per thousand stumpage value in favor of the straits timber west of the Pysht River (Record p. 108).

Witness says that the different sections of timber throughout these zones differs a great deal as to the stand and quality of the timber and roughness of the ground, all of which go to determine the facility and cost of cutting into lumber and consequent value (pp. 110, 111).

VIII.

The following witnesses for plaintiff testified as to timber values:

EUGENE FRANCE qualifies as an expert in buying and selling timber and in logging operations on a large scale since 1886 in Washington and Oregon. He investigated some of these lands of the plaintiffs back as far as 1892; had a report from the cruisers showing the character of the lands and was over some of them at that time. As to the value of the interior timber he states as follows:

> "Well, it would be very hard to place a buying value upon it, because timber in a general way has been depreciating since 1908, but I would think that if the parties owning this timber could

> get an offer of $1.00 per thousand for the fir, spruce and cedar, it would be an offer that if I had been one holding the timber I would very quickly have embraced."

As to the straits timber, in Zone 1, he says:

> "Well that timber that was handiest to the water and to the Straits, it might be possible by logging to get $2.00 per thousand for it."

He states that hemlock has no value and had no value in 1913 (Record p. 113) and that there was no increase in the market value of timber in the State of Washington in the year 1914 over 1913, and that timber values have fallen ever since 1912 from 35 to 40 per cent by a gradual change (p. 114).

THOMAS BORDEAUX, whose qualifications as an expert the defendants conceded (p. 118), puts the market value of the interior timber on March 1, 1913, fir, spruce and cedar at $1.00 per thousand; the straits timber of the same kind at $2.00 per thousand; and hemlock, both exterior and interior, at 50 cents per thousand. The timber is less valuable now than it was in 1912. It depreciated from 1912 to 1913 12 per cent and in 1913 and 1914 from 10 to 15 per cent more by gradual depreciation. He thinks the outlet for this timber is by Grays Harbor and that the interior timber lands lie in very rough ground, in the hills for the most part. In his judgment the tim-

ber on the interior lands was not the same in every section in quality, character or stand; some sections were better than others (p. 119).

JOHN A. REA (p. 121) qualifies in other respects and says that he has been a regent of the University of Washington for five years, which institution has some 50,000 acres of land. He has gained information as to the value of timber lands by examining these; has also bought and sold timber lands in small quantities since 1890 in a dozen counties or more. The university has about 400 acres of timber land in Clallam County near Lake Crescent.

He thinks the straits timber is worth double the interior timber because of the logging conditions, distances and isolation. Hemlock, in his view, had no value at all; was worth perhaps 30 to 40 cents per thousand, and in the interior many buyers would not pay anything for it. He says the timber market has been running off since 1910, and there have been no considerable sales of stumpage timber since 1913. He follows the records, takes the newspapers, and had not seen or heard of any sales (Record p. 122).

He thinks that the interior lands are not worth more than $1.00 per thousand and would have to be held for ten to twenty years (p. 123).

EARL C. DUVALL (p. 123) has been in the State of Washington since 1881 and a timber cruiser since 1888. He was employed by the Port Blakely Mill Company, the Northern Pacific Railway Company, Mason County Logging Company and others; has bought and sold timber and engaged in logging. He had charge of Clallam County's cruises of its timber lands in the west end of Clallam County in a portion of the years 1911, 1912 and 1913 (p. 124), which were adopted as its official cruise (p. 126), subsequently introduced by defendant as Exhibits 19 and 20.

Witness, referring to Exhibit A (the zone map, original, where the Clallam Lumber Company's lands are colored in red and the Ruddock and McCarthy lands in yellow), says substantially that he had been over all of these lands and was acquainted with the character of the land and timber and logging conditions and general topography of the country. He was present in court and heard the testimony of T. A. Rixon.

Referring to the timber, witness says that the Hoko tract fir and spruce, and the Pysht River fir and spruce are the best quality of timber and a little older growth than the Solduc tract. That after crossing the Twin Rivers to the west, from there on to the Pysht and up to the burn on the Pysht, the timber

is largely old growth fir (straits timber), is probably the oldest growth of timber in the country and would probably give a bigger per cent of clear than the timber farther up (p. 124). The zone line between Zones 1 and 2, he says, seems to follow along the divide on the straits side of the divide. Adjoining sections of this timber land vary materially in quality. He knows of no township where the quality of the timber runs uniformly through the entire township. Sections vary in quality and quantity. In the opinion of the witness, the value of the timber lands marked in red (plaintiff's lands) on March 1, 1913, would be $1.00 per thousand feet. He thinks there would be no change in value between March 1, 1913, and March 1, 1914:

> "It is purely a speculative proposition away from transportation. I do not think there has been much change in the last year in value. Logs are about the same price, a little hard to sell."

The above price of $1.00 per thousand refers to fir, cedar and spruce. Hemlock would not exceed 50 cents per thousand; he never knew of hemlock ties having any commercial value; they would only be of value to a person constructing a logging road. He would consider fir, spruce and cedar along the lands about the Pysht and Hoko Rivers to be worth about $2.00 per thousand and hemlock about 75 cents per thousand (straits timber). He bases this difference in value between the interior and exterior timber on the

facility of transportation and nearness to market, and the Hoko timber is better in quality.

M. H. GRAHAM testified. His qualifications as an expert timber man and operator in all departments were admitted by the defendants (p. 126). He thought that hemlock in March, 1912, was perhaps worth 40 cents per thousand, but timber buyers were not paying anything for hemlock; it had no value except perhaps in rare instances where a railroad passes through it and where there is an opportunity to mill it on the ground and load it on the car, but where it had to be logged, put into the water and towed, it had no value (p. 127).

There has been no change in the market value of timber lands in Washington in 1912, 1913 and 1914. The tendency has been downward ever since 1910, a gradual depreciation. The depreciation of timber from March, 1912, to March, 1914, was about 15 per cent, and since March, 1914, there has been a depreciation of 10 per cent. Fir, spruce and cedar on the interior lands on March 1, 1913, in the judgment of the witness, had a market value of about $1.00 per thousand.

The following witnesses testified for the defendants on the values of timber lands, qualifying generally and also as having gone down into and through the timber and having afterwards examined the county cruise books in the office of defendants' counsel, going over

some fifty to sixty thousand acres without making any memoranda or notation thereof:

ALEXANDER POLSON (p. 305) qualifies as an expert timber dealer and operator of many years. States that he has examined the cruises of Clallam County showing the plaintiffs' timber, also the timber in the straits zone, No. 1, including the timber of the Puget Sound Mills & Timber Company (the Mike Earles property), of Merrill & Ring logging at the mouth of the Pysht River and the Goodyear timber logging on Clallam Bay (straits zone). He obtained his information about these lands from an examination of the county cruise books in the office of defendants' counsel (pp. 305 to 308). Witness is asked by defendants' counsel:

> "Having examined these cruises, what in your opinion was the market value of the timber in the interior of Clallam County as shown upon this map marked green and known as the Lacey holdings on the 1st of March, 1912?"

This was objected to by plaintiffs as incompetent and it developed on cross-examination that the witness had no independent knowledge of the lands other than that gained in looking at the cruises in the office of the defendants' counsel, making no memoranda thereof, examining some 60,000 acres of lands in a casual way, and being unable to locate the land or to

tell how the timber was graded except by reference to the books of the county cruises.

The objection was overruled by the court and an exception reserved (p. 308).

We submit that this was an erroneous ruling and that while the testimony of this witness on this subject was corroborative only of others it should be eliminated in measuring the weight of testimony.

Witness says that these interior timber lands of plaintiffs were in his judgment worth, fir, spruce and cedar, on March 1, 1912, $2.00 per thousand, and the straits timber the same—and both the straits and interior timber worth the same in March, 1914, as in March, 1912. The Merrill & Ring Company owns one-half the stock in witness' company, the Polson Logging Company (309). There are no driving streams in the interior that run to the straits—the streams in the interior where plaintiffs' lands lie run to the Pacific Ocean in a southwesterly direction (310).

The shifting and evasive responses of witness (311), coupled with his interest with the Merrill & Ring Company—the straits owners—show the bias and animus of this witness as leagued with the defendants (310-312). He admits he estimates that a railroad must be built into this timber from Port Angeles, that his valuation of the timber is based on this means

of transportation, but displays unconcern, worse than ignorance, of the route, costs, practicability of construction of such road. Witness admits there has been no market on Puget Sound that would justify opening up such a tract as plaintiffs' lands during recent years (314-315). Witness would attach no more value to the Mike Earles' timber by reason of its being presently on the Milwaukee railroad operating into Port Angeles than to the interior lands without a railroad (319).

CHARLES McGUIRE (p. 339) says plaintiffs' timber in the interior on March 12, 1912, was worth $2.00 per thousand, the straits timber about the same. Valuation in 1914 would be about the same as in 1912 for both the straits and the interior timber, viz, $2.00 per thousand.

Witness has never himself made any sales of timber lands in the interior of Clallam County and does not know of any such sales being made; considers the hemlock of little value in either the interior or the straits timber (p. 348).

On cross-examination witness says all of the straits timber is about of the same value as the Mike Earles' timber (which latter is on the Milwaukee railroad and being operated into Port Angeles); doesn't think the presence of a railroad adds anything to the value of Mike Earles' timber (350), and the fact of timber be-

ing in the interior without a railroad or on the straits with a railroad does not affect its value because large holdings would justify building a railroad (350).

Witness thinks the log market remained the same from March, 1913, to March, 1914 (p. 354). He considers that this timber would have to be taken out by way of a railroad to Port Angeles.

Witness thinks a tract of 160 acres of land would be of very much less value proportionately than a large tract; practically impossible to value it (p. 354).

C. I. WANAMAKER (p. 356) values the interior timber on March 1, 1912, at from $1.75 to $2.00 per thousand, and about the same on March 1, 1914; and the timber in the straits zone about the same (p. 356). Hemlock was of no value either in 1912 or 1914 (p. 359).

The following inquiry is made of the witness:

> "Q. Suppose that the lands of the plaintiffs here in the interior were taken from where they are now lying and put alongside of the lands on the straits here, what would you say as to the relative value of the timber in the two tracts?
>
> A. They would be no more valuable on the straits than where they are.
>
> Q. Why not?
>
> A. The character of the shoreland getting that timber to the harbor. There are only two or three harbors along that coast.
>
> Q. Lets take that comparison before we go into that phase of the case. What I would really

ask you is, what would you say as to the comparative value between the Lacey tract and the straits timber, if they were supposed to be taken out of the interior and placed along the straits timber in the same relative situation.

A. Practically the same value.

Q. And you regard the timber then as of the same character and quality?

A. Practically the same.

Q. How about the grade?

A. I should judge about the same grade.

Q. And you think that they are of the same market value situated down there today and taken in 1912 as they would be out upon the straits?

A. I do."

Witness thinks this timber would be operated by a railroad to be built to the Pysht River, some 18 miles long.

He is further asked (p. 360):

"Q. Do you know of any timber that has ever been sold in the interior of Clallam County for any such price as you put upon it, $1.75 a thousand?

A. I don't know of any being sold.

Q. Do you know of any that has ever been sold in the interior of Clallam County for more than $1.00 a thousand, fir, spruce or cedar?

A. I don't know of any sales being made there.

Q. Do I understand that you don't know of any sales ever being made at any price in the interior?

A. Not to my knowledge.

Q. Then your judgment of the values which you have given is not based upon your knowledge of any purchase or sale of any such timber in Clallam County?

A. It is not based on that, no."

R. D. MERRILL (p. 362) describes at length the items which go to make up the value of standing timber from an operative standpoint. He compares the relative location and quality of the straits and interior timber, says that the timber in the interior is worth fully as much or more than the timber on the straits. Taking it as a whole he knows it is worth more; that is, taking all the tracts along the straits as one tract, and all the Lacey tract in the interior (plaintiffs' lands being known as the Lacey tract). He says the fire risk is better than on the straits; that is, the interior country is wetter than the straits; there is more rain. Witness says there is a great difference in the elements which go to make up the value of standing timber in its physical characteristics and between timber in one zone and that in another, and between timber in neighboring zones and different districts (pp. 362, 365, 370, 378, 381).

Witness figures that the plaintiffs' timber would be logged and shipped by railway from the interior to the mouth of the Pysht River, or Clallam Bay; that a railway could be built to the mouth of the Pysht River for $200,000 (p. 365).

This witness' company, Merrill & Ring, own 700,000,000 feet of timber at the mouth of the Pysht River. He states that it would cost no more to open up the straits timber with a railway than the plaintiffs'

timber in the interior, because of the greater area of the plaintiffs' lands to absorb the cost.

These paradoxes of this witness are accounted for upon cross-examination. The witness is a member of the company of Merrill & Ring, owning a large tract of timber on both sides of the Pysht River at its mouth, where they had started buying as early as 1880 (p. 372).

> "Q. Have you been familiar with sales of timber land in the interior for the last ten years?
> A. No, I have known of some sales, I have heard of sales, but I do not know that I can give any definite figures as to sales in the interior.
> Q. Have you ever known of sales in the interior at a price greater than a dollar a thousand?
> A. No, sir, and I have no information of any exterior greater than a dollar a thousand."

Witness had recently bought a tract of land in a pass between the Lacey holdings and Lake Crescent because he thought it was a good piece to own; he thought that a railroad would go through there sometime and it would be valuable on that account (pp. 372, 373). And for this he paid $1.00 per thousand feet for the timber.

This indicates pretty well the animus of this witness, the star witness of the defendants, representing the straits zone operating timber men, favored by the taxing officers and aligned against the interior timber

owners, they naturally being desirous to retain the assessment of 80 cents a thousand on their $2.00 timber as against 70 cents per thousand on the interior $1.00 timber, favored because they are operating and employing labor.

Witness thinks the ideal way to operate plaintiffs' timber would be to establish one or two saw mills at Lake Pleasant and saw the timber into lumber there. Referring to Exhibit A, Lake Pleasant will be found about the eastern central part of Zone 2.

Witness says that the log market was higher in the spring of 1912 than in the spring of 1914; during that period from 1912 to 1914 there has been no great demand for logs. A great many camps have been shut down. It has been a poor period for logging (p. 381).

Witness says that his estimate of the value of these timber lands is from an operative standpoint, based upon the quantity of land in one holding; that if one had a forty-acre tract situated as these interior lands it would be worth nothing. The same would be true of a thousand acres without a railroad; that his value is predicated upon the aggregation of a sufficient block of land in one ownership to justify a railroad (p. 384). Hemlock, he estimates, has no value where it has to be towed, but hemlock might be utilized if you have a railroad and saw it on the

ground. Where the fir is heavy and thick the hemlock is very defective and not a good tree, but where there is a solid stand of hemlock it grows into beautiful trees (p. 384).

It will cost witness' company some $200,000 to prepare logging grounds at the mouth of the Pysht River for their logging operations (p. 394).

Witness concludes:

> "In this testimony which I have made, I figure that we have sort of worked against ourselves, in a way, because we have always had an eye on the timber on the interior."

N. I. PETERSON testified (p. 396) that he is in the logging business in the extreme east end of Clallam County. Thinks the market value of plaintiffs' timber in Zones 2 and 4 in March, 1912, was about $2.00 per thousand for fir, spruce and cedar; in 1914 it would be the same. Witness has never seen the Merrill & Ring timber, nor the Mike Earles timber, but has seen a portion of the Goodyear timber (on Clallam Bay). Witness skipped through the county cruises on this timber and would say that the value of the straits timber was about $2.00 per thousand for 1912 and 1914 (p. 397).

Witness does not know of any sales having occurred within the last five years in any of the interior lands; does not know the price of any timber lands

sold in the west end of the county; thinks hemlock in the west end of the county is worth from 25 to 30 cents a thousand, but made no examination or personal inspection of the amount of hemlock.

J. E. FROST, one of the counsel for defendants, testified (p. 402): For the past three or four years witness has been retired from the practice of law and engaged in the logging business. He states his qualifications as an expert as to logging, lumbering, transportation and taxation, and gives a history of the experience of his company which is logging lands on Cedar Lake, in King County, tending to show that there is an actual market value for hemlock. On page 406 he gives the selling price of hemlock logs. The Court will observe, however, that this is the price of the timber as cut into logs and not the stumpage price.

It is apparent that his experience with the manufacture and sale of hemlock was in a special line and in a specially developed market, and the company was operating under a contract with the City of Seattle, which desired to clear off its watershed on Cedar Lake.

Witness on cross-examination (p. 413) states that he is counsel in the case on a contingent fee, under contract to receive a certain fee at all events and twice this if he is successful for the county in the suits.

WILLIAM J. CHISHOLM (pp. 319 to 330) is general manager of the Merrill & Ring Logging Company. Says that the Lacey holdings in the interior, belonging to the plaintiffs, would log into the waters of the straits as cheaply as timber in Zone 1 (the straits zone) owing to the fact of it being in a big holding and the country being level in the interior zone. This timber in the interior, by reason of its large holdings, would be worth about $1.50 per thousand, the same as the timber on the straits, in March, 1912, and in March, 1914, about the same. Witness has been with the Merrill & Ring people for thirty-five years, is now on the Pysht River in charge of their operations, where Merrill & Ring have about 25,000 to 30,000 acres. Merrill & Ring own the mouth of the Pysht River on both sides.

Merrill & Ring are now contemplating logging other lands on the straits. They might put in from seventy-five to one hundred million feet a year. Thinks that the Mike Earles mill cuts that much or more (p. 332).

Would not call hemlock of any particular value down there (p. 326). Says that the Merrill & Ring timber, the Mike Earles timber (all in the straits zone) and the timber in the interior are worth all the same, but admits the following:

"* * * The Mike Earles mill is as you

> know on the railroad running out here to this plant, and is operating with the railroad as you say something in the neighborhood of a hundred million a year I should judge" (p. 327).

Witness substantially admits that his valuation is based entirely upon an operative basis and not upon the market value of stumpage timber, saying:

> "I do not know the exact value. There is no one knows the exact value of a stick of timber until it is cut." . (327).

H. B. Newbury, values plaintiffs' timber on March 1, 1912, at from $1.75 to $2.00 per thousand, the straits timber the same, and the values would remain the same for both classes of timber in March, 1914, as in 1912. Witness eliminates hemlock from this, saying that it would be of no value whatever except as it might be used in logging operations. (P. 333).

On cross-examination the witness says he never bought or sold any timber lands in Clallam County, has not purchased or sold any lands in any considerable quantity during the last five years; there have been no considerable sales of timber land during that period. The tendency of the market for the last five years is downward from an operating standpoint; from a holding standpoint, it has been at a standstill. (Pp. 333, 334).

Witness figured on the timber being taken out

by a railroad from the interior to the Pysht River or to Clallam Bay. (337).

Witness has no knowledge of any sales of timber in the interior country within the last five years; does not know of any sales of any timber lands having taken place in Clallam County for more than $1.00 per thousand. He only knows of one sale having occurred some four or five years ago in Clallam County; does not know of any since; knows of nothing that has occurred within the last five years that would raise the value of the timber on the interior lands in Clallam County. (P. 338).

From this review of substantially all of the evidence as to the value of the timber lands given by the experts, those in the straits zone and those in the interior, of the plaintiffs', the following matters are apparent:

First: The plaintiffs' witnesses were the only ones who testified as to the market value of the timber lands, and they placed these at $2.00 per thousand feet, fir, spruce and cedar, for the lands in zone 1 (the straits zone), and $1.00 per thousand for the lands in the interior (plaintiffs' lands).

Second: The valuations by the plaintiffs' witnesses were all based upon the speculative value of

what the logs would be worth if a railroad was built into the timber and the timber opened up, estimating it from the standpoint of the profits and losses of an operating business not yet undertaken, and most of defendants' witnesses expressly admitting that they knew of no sales within five years past of timber lands in Clallam County, either on the straits or on the interior, and never heard of any sales at more than $1.00 per thousand for the lands.

Third: Their valuation from an operative standpoint was based upon the assumption of the building of a railroad from the lands on the interior to the straits to the mouth of the Pysht River, or to Port Angeles.

Fourth: There had been no demand in recent years for timber that would justify the opening up of such a batch as plaintiffs' lands.

To establish the cost of such railway routes the defendants introduced the testimony of the following witnesses:

R. H. THOMPSON (p. 301). In 1891 made an investigation, estimate and report of a proposed route from the mouth of the Pysht River over to the Solduc River, by way of Beaver Creek. This was made at the instance of Merrill & Ring. One route, 16½ miles in length, would cost $210,000. Another route,

21 miles in length, would cost $320,000. This, without railroad or logging equipment.

S. A. WALKER (p. 394). An engineer in the employ of Merrill & Ring, estimates the cost of a railway from the Pysht River to the interior timber, 18 miles, at $191,000, without railroad or logging equipment.

R. W. REMP (p. 400), an engineer for Clallam County, made a survey for a railroad from the Pysht River to the Solduc and cross-roads down below Sappho, a distance of 18 miles (p. 401). This he figures at $173,000, without logging or railway equipment.

WILLIAM J. CHISHOLM, general manager for Merrill & Ring, gives an estimate of the logging equipment necessary to operate the plaintiffs' lands at an aggregate of $375,000. (P. 325).

T. A. RIXON, plaintiffs' witness, estimates the cost of a railway from the middle of the plaintiffs' lands down on the Solduc by way of Lake Crescent, to connect with the Milwaukee Railroad out of Port Angeles, as follows (p. 106):

From its western terminus to Lake Creccent, 20 miles (estimated from the map, Exhibit A, at a mile to the section), at $5,000 per mile, $100,000; from 2 miles west of the lake to Piedmont, including heavy tunneling, $25,000 per mile, or $50,000; from Piedmont

to Port Angeles, 25 miles at $10,000 per mile, or $250,000; bridge across the Elwah River, $40,000, or a total of $440,000.

A road to the southwest, to Grays Harbor, he estimates at 70 miles at $15,000 per mile, or $1,050,000; three large bridges $60,000, or a total of $1,110,000.

The route by the Hoko River to Clallam Bay, on the straits, being 30 miles, at $12,000 per mile, or $360,000, and 12 miles at $20,000 per mile, would cost a total of $600,000.

It will be recalled that all of the testimony of the witnesses for the defendants, as to values of the interior timber lands, was based upon the speculation of building a railroad from these interior timber lands to the mouth of the Pysht River, and one of them, Alexander Polson, thought the timber would go out by way of Grays Harbor.

But the mouth of the Pysht River is not available because owned on both sides by Merrill & Ring (pp. 107, 371) to be operated at its full capacity, and which is now being dredged by them for such capacity, at an expense of $200,000. (P. 394).

While a common carrier railway might condemn a right-of-way from the uplands over the mountains, on the interior, to the mouth of the Pysht River, it

would be utterly useless for logging purposes without booming grounds, for which there was no power of condemnation, and the ground is already occupied and fully utilized by Merrill & Ring, these being the same people who had purchased the mountain pass down by Lake Crescent, with the evident intention of shutting the plaintiffs' timber in from egress toward Port Angeles. (P. 373).

MEASURE OF VALUE OF TIMBER LANDS FOR TAXATION AND ASSESSMENT ADOPTED BY DEFENDANTS AND FOLLOWED BY THE TRIAL COURT WAS ERRONEOUS.

By the state statute, Section 9112, Remington & Ballinger's Code, it is provided as follows:

> *"All property shall be assessed at its true and fair value in money. In determining the true and fair value of real or personal property the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor shall he adopt as a criterion of value the price for which said property would sell at auction, or at a forced sale, or in the aggregate with all the other property in the town or district; but he shall value each article or description of property by itself and at such sum or price as he believes the same to be fairly worth in money at the time such assessment is made.*
>
> *"The true cash value of property shall be that value at which the property would be taken in payment of a just debt from a solvent debtor.*
>
> *"In valuing any real property on which there is a coal or other mine, or stone or other quarry, the same shall be valued at such a price as such*

*property, including the mine or quarry, would sell at a fair, voluntary sale for cash. * * *"*

As to what is the speculative value or operative value as contra-distinguished from the market value we cite the following authorities:

Vancouver Waterworks Co. vs. Clarke County, 55 Wash. 115.

Here the court was treating of the valuation of lands taxed, as available for a supply of water for the city. The court said (p. 115):

> "Nor is it evidence that they are over-assessed, to compare the amount at which they are valued with the assessment put by the assessor upon lands containing springs, without showing that the springs are in demand for the use like, or similar to that for which appellant's springs are used; but of this there was no evidence at all. The witness merely said that the springs could be used for furnishing water to Vancouver, not that there was any demand for their use for that purpose, or for any other, that made them of value. * * *"

Spring Valley Waterworks vs. City, 192 Fed. 163.

In estimating the value of lands belonging to the water company in a condemnation suit by the city, testimony showing how many building lots a tract of this land could be divided into, and what such lots could be sold for, separately, was held inadmissible, the court saying:

"In this case we are dealing with values as they existed and conditions as they were during the years 1903, 1904 and 1905. * * * Such testimony is too uncertain and speculative."

The court referred to Railway Co. vs. Cleary (Pa.), 17 Atl. 468, quoting:

"The jury are to value the tract of land and that only. They are not to determine how it could best be divided into building lots, nor conjecture how fast they could be sold, nor at what price per lot. The speculator and investor, in deciding what price he could afford to pay, would consider the chances and probabilities of the situation as then actually existing. A jury should do the same thing. They are not to inquire what a speculator might be able to realize out of a resale in the future, but what a present purchaser would be willing to pay for it in the condition it is now in."

Reed vs. Rahm, 4 Pac. 112 (Cal.)

"The value of a tract of land is its true and absolute value. The value is its actual existing value as opposed to its potential or possible value."

Sutherland on Damages, Vol. 4, p. 3143, in measuring damages in condemnation suits therefor, says:

"The owner may have damages for being prevented from removing minerals under a right-of-way. The jury, however, is not at liberty to make special allowance for the value of unopened mines their existence is only material so far as they affect the market price of the property."

N. & W. Ry Co. vs. Davidson (W. Va.), 53 S. R. 727.

Suit in condemnation of lands. Here it was said that the testimony of the witnesses as to the value of the land with underlying coal on the basis of operating the unopened coal seams, was erroneous, the court saying:

> "The value must be arrived at by ascertaining the true market value of the land proposed to be taken, taking into consideration all the elements of value as would be done in negotiations for the sale and purchase therefor, between private parties."

Gardner vs. Brookline, 127 Mass. 358.

Assessment of damages for land taken by the city.

It was held that the fact that the land was cranberry producing land was competent to show its effect upon the market value of the land, but it was not competent to go into the question of the production or cost of production or profit, in the sale of cranberries, being on an operative basis.

Burt vs. Wiglesworth, 117 Mass. 303.

At page 306, Gray, judge, says:

> "In estimating that value (namely, the land to be taken) the jury might doubtless take into consideration the uses to which the land might probably be applied. And witnesses acquainted with the market value of the land in its existing condition at that time might testify to the fact of what they thought the value was, and state their reasons for their opinion. * * * But

testimony as to what would be the fair rental value of the land with a suitable and proper building upon it, related to a mere matter of opinion as to the future, not of a present, fact, and was too prospective and indefinite in its nature to be competent evidence of the present value of the land not built upon. * * *"

In re Daly, 45 N. Y. Sup., p 787.

Relating to the value of land in condemnation proceedings:

"But still it is the market value of the property that is the measure of compensation. When, therefore, it is sought to show that a tract of land has a use for a particular purpose, it must also be shown that it is marketable for that purpose or has an intrinsic value. If on the farm there was a quarry or deposit of ore, the owner would not be limited to the value of the land as a farm, but would be entitled to compensation for the quarry or mine, if they increased the value of the land. But though the stone of the quarry was good, or the ore reached, if the location of the land was such, either from lack of transportation facilities or for other reasons, as to render the quarry or deposit of no particular advantage or value, then he would be confined to the value of his land for farming purposes. * * *"

San. Dist. Chicago vs. Loughran, 43 N. Y. 359 (Ill.)

Condemnation proceedings. It was here held that the proven existence of limestone underlying the land might be shown to affect the market value of the land, but the estimate of its value based upon profit in

quarrying the stone was held improper (p. 360), the court citing Am. & Eng. Ency. L., Vol. 6, p. 568:

> "* * * Where the land taken contains minerals, the measure is the same that would be given for land with mineral in it, but any inquiry as to the profits or price or value of the minerals, if the minerals themselves had been taken out, would not be permitted."

In condemnation of a water power, it was held incompetent to permit evidence showing that alteration in the water race would increase the power as being theoretical and speculative—a fanciful attempt to ascertain what would be the extent of the power if certain supposed alterations were made, and if a considerable sum of money were devoted to this improvement.

> *Cox vs. P. H. & P. R. R. Co.,* 64 Atl. 731 (Pa. State).

Held incompetent to calculate the number of tons of limestone underlying lands to be taken and multiplying that by the estimated price per ton, as forming an estimate of the value of the land.

> *City of Atlanta vs. Nelson* (Ga.) 82 S. E. 99.
> *Haslam vs. R. R. Co.,* 64 Ill. 354.

The existence of a mine under property may be shown as affecting its value, but not the probable operative profit.

> *J. & S. E. Ry. Co. vs. Walsh,* 106 Ill. 255.

Page vs. Wells, 37 Mich., 415. Opinion by Judge Cooley:

"The market value of lands is not to be determined by combining several values of its constituent parts, such as trees, gravel and coal, and its value for agricultural purposes when these are removed. Witnesses as to the value may take account of these things, but in their estimate must give their opinion of the market value of the land as a whole."

Dupeis vs. C. & N. Ry. Co. (Ill.) 27 N. E. 720.

Sedgwick on Damages, Vol. III, p. 2431:

"As damages are measured by the actual market value, the test of whether any particular element of value is to be taken into consideration is dependent upon whether this use, or the expectation or possibility of it, affects the market value under all the circumstances of the case. This has been held in Illinois, in the case of lots valuable for dock purposes, but where there was no immediate demand, that their value when improved for this particular use, profits derivable, or their value at some future time when the wants of the community might make the building of docks profitable, would be merely conjectured and error; but if the location and possible future use for docks enhanced their present market value in their existing condition, this would form an element of damage to be considered by the jury."

As showing the unreliability of defendants' evidence as to the valuation of these interior timber lands, based upon the cost of a railroad to be built, and operations hereafter to be conducted, and as ex-

emplifying the danger of such measure of value, the following is instructive ,if not conclusive:

FRANK T. BURROUGHS, a witness on behalf of the plaintiffs, testified as follows (p. 690): That he is in the traffic department of the Milwaukee Railway as freight agent of this railway company's lines in Washington and in Montana. Witness produced the tariff sheet issued by the Seattle, Port Angeles & Western Railway and approved by the Washington Public Service Commission, showing the rate of freight on logs from Mike Earles' plant near Port Crescent to Port Angeles, a distance of 25.2 miles. The rate for 25 miles is from $1.45 to $1.50 per thousand feet of logs. The rate for the short haul of 7 miles is $1.10 to $1.15 per thousand. The Milwaukee Railroad, witness thinks, is now within about 6 miles of Port Crescent, running easterly and southerly to Port Angeles. The tariff sheet is introduced as plaintiffs' Exhibit HH.

JOHN H. ROBINSON, a witness for plaintiffs, testified as follows (p. 683): He is a clerk in the office of the division superintendent of the Union Pacific Railway Company, at Seattle, and is acquainted with the tariff upon shipments of logs. He produced and there is introduced in evidence by the plaintiffs as Exhibit GG, the freight tariff of the Northern Pacific Railway Company, approved by the state rail-

way commission. Referring to this he gives the following tariff (p. 686): This is the rate in dollars per thousand feet: 10 miles or less, $1.00; from 10 miles and not over 15 miles, $1.25; from 15 miles and not over 20 miles, $1.35; from 20 miles and not over 25 miles, $1.40; between 25 miles and 30 miles, $1.45; between 30 and 35 miles, $1.50; between 35 and 40 miles, $1.55; between 40 and 45 miles, $1.60; between 45 and 50 miles, $1.65.

Now these were actual figures in practical business life, charged by a railway then existing, a common carrier, under a tariff sheet approved by the state railway commission, acting for the protection of the timber owner and shipper and not imaginary figures compiled by interested witnesses as to what might be done on a railway not yet built, in a country which did not justify it, to haul logs to a market that did not yet exist.

There was testimony introduced by the defendants through their interested witnesses, Mr. Merrill, Mr. Frost, counsel for the defendants, as to other tariffs of a somewhat less rate in other parts of the state, but the foregoing was the only testimony of the operation of the railways anywhere in the neighborhood of this land, and through the official tariff sheets became, as it were, an official declaration.

According to the above official tariffs, it would

cost the plaintiffs to transport their logs from the center of their holdings to the mouth of the Pysht River, 21 miles, not less than $1.35, and they could not get them into the bay as there were no logging grounds open to them. It would cost them more than $1.50 to transport them by a railway yet to be built, to Clallam Bay, where they would be equally without a logging outlet. It would cost them certainly this much, and more, to reach Port Angeles, a distance of over 45 miles by way of the Solduc and Lake Crescent, and considerable more to transport them to Grays Harbor, 70 miles, over a railway yet to be built at a cost of $1,110,000.

None of the witnesses for defendants claim that these interior timber lands are any more valuable than the straits lands, disregarding the remoteness from tide water or their isolation, but consider them of the same intrinsic value and no greater. Both classes of timber, they say, are worth $2.00 per thousand, and yet it costs $1.50 per thousand to pick up this interior timber and put it where now stands the timber of the straits zone, on Clallam Bay, Pysht River, or at Mike Earles' camp near Port Crescent.

We contend, therefore, that the testimony of the experts called by the plaintiffs, who testified on timber values, namely, Thomas Bordeaux, Eugene France, M. H. Graham, John Rea and E. C. Duvall, that the

market value of this interior timber land was $1.00 per thousand, compared with $2.00 per thousand for the timber on the straits zone, was practically unanswered by the testimony of the defendants' witnesses, as to the speculative value of these two classes of lands, basing their testimony wholly upon the profit or loss of operation, and in most cases admitting that they had no knowledge of any market value of timber lands in Clallam County for the past five years and never heard of a sale of any timber lands in the interior of the county, at over $1.00 per thousand.

And in weighing the credibility of the witnesses upon this branch of the case we call the court's attention to this fact, that while these witnesses for the defense, Chisholm, Frost, Merrill, Polson, McGuire and Newbury, outnumber the witnesses for the plaintiffs, the plaintiffs' witnesses had no personal interest whatever in the event of the suit, but were totally disinterested, whereas this can hardly be said of at least four of defendants' array, namely: J. F. Frost, of counsel for the defense; Merrill, the representative and champion of the straits zone timber owners; Polson, his partner; Chisholm, his manager. And among the witnesses for the plaintiffs is E. C. Duvall, who estimated and compiled for Clallam County its cruises of these very lands, by which it claims the plaintiffs and all parties are bound. He placed the

market value of the straits timber at $2 per thousand (p. 125), and of the interior lands at $1 (p. 128).

JOHN HALLAHAN, assessor, called by the defendants, introduced a map, showing the timber zones and described the references to the various timber holdings in the western part of Clallam County (p. 258), which map is introduced as defendants' Exhibit 18.

The witness states that all the lands included in that part of Clallam County were timber lands excepting at Forks Prairie and Quillayute Prairie. (P. 262).

There are introduced in evidence as defendants' Exhibits 19 and 20, two large volumes, containing timber cruises of the county (p. 263). John Hallahan explains these substantially as follows (pp. 268 to 273):

The timber lands are divided into ten-acre tracts. As designated in a diagram appearing at the top and left hand corner of each page, letter F represents fir, The figures following represent the number of trees on the ten acres. The next is the letter A, which represents the average number of thousands of feet, board measure, contained in each tree. This is shown as to the amount of fir, spruce, cedar, and hemlock on

each ten acres, giving the number of trees and average run per tree (p. 269), and the grades of each forty acres as totaled up (p. 270). H. P. represents hemlock piles or poles, and the number of them is given for each ten acres. H. T. represents Hemlock ties and the number of these is given.

At the right hand top of the map is a topographic sketch made by the cruiser in the field of each forty acres there, a double run.

The figures on each ten acres show the aneroid markings of the elevations. The character of the ground is shown as to being swampy, bushy or not (p. 271), and on each forty totaled up, the total amount of feet of each variety of timber (p. 271). The dead and down timber is also shown. The grading of the logs as to first class, second or merchantable, or No. 3; the character of the surface of the ground as to being rough or smooth (p. 272); the character of the timber, giving quality, old growth, good quality, and whether smooth or sound; also character of the logging conditions of the forty acre tract. The lands that were burned over are also shown. (P. 272).

"Q. Is it true that all the timber lands in Clallam County were cruised with equal care?

A. I believe so, yes, sir.

Q. You have the same report of the same conditions, the information concerning all the timber lands in that county?

A. The same information as to all timber

lands west of range 9 were cruised under the direction and supervision of Mr. Duvall. He had absolute charge of the cruising in the field, and the work, I believe, has been very correct and complete.

Q. The values placed on the timber land in Clallam County for the year 1914 by yourself as assessor were made upon the basis of these criuses, were they?

A. Absolutely."

We direct the attention of this court to these volumes of timber cruises (defendants' exhibit 19 and 20) and ask the court to observe that with such information before him the assessor could have valued every ten-acre tract of the timber lands of Clallam County with exactness.

Now he is asked, on cross-examination, what method he followed in drawing and designating these zones and observe the answer (p. 503):

"Q. What did you figure to be the full market value for the purposes of assessment in this zone up here?

A. Repeat the question.

Q. (Question read).

A. The assessment for 1912 in those lands and in this zone along the straits?

(Objection by defendants; overruled).

A. The question is too ambiguous; I could not answer it that way.

Q. In what way did you not understand it, Mr. Hallahan?

A. You haven't asked me a direct question; you, however, asked me an ambiguous question.

Q. How did you come to draw those lines here by zones? (p. 507).

A. That was a matter of calculation.

Q. How do you calculate it?

A. We calculate from the information at hand.

Q. Give us the calculation; what did you put in the zone on the Straits?

Q. (Mr. Peters): How did you come to draw this line that I am now tracing?

A. That line represents my judgment at the time I put it on there.

Q. Judgment of what?

A. Judgment as to the assessment of timber within that line, to the north of that line.

Q. Then as I understand you, you made a detailed estimate of the values for the purposes of assessment of every forty acres and then——

A. The law requires that——

Q. And you fulfilled the law in that respect?

A. Yes, sir.

Q. And after having done that, you got out a map and drew a line down here in this way, and said that all of the timber lands up along here, included between this line and the Straits, was assessable at 80 cents for fir, cedar and spruce and 40 cents for hemlock, is that a fact?

(Objection by defendants, overruled).

Q. (Question read).

A. For the year 1914?

Q. For 1912, for eighty and forty?

A. Yes, sir.

Q. That is the way you did that?

A. That is the way I done it, yes, sir.

Q. Why didn't you begin this line, say, four or five miles over to the east of where you did, and run it down two miles south of where you did?

MR. EWING: I object to that.

Q. (Mr. Peters): What I want to get at is to have you explain just why you ran the line the way you did; why did you run that line just the way you did?

A. My judgment at that time ruled my way. My judgment was that the timber laying north of that line was worth that amount for assessment purposes.

Q. Your judgment was that all the timber laying north of this line, and south of the Straits—I am now pointing at what you designate zone 1, was worth eighty and forty? (p. 508).

A. Yes, sir.

Q. That is why you drew that line that way?

A. Yes, sir.

Q. And that is the way you assessed the property for 1912?

A. That is the way I assessed the timber, the timber only.

Q. Mr. Hallahan, now, referring to this zone No. 2, why did you draw the lines, the boundaries of this zone No. 2, in the manner in which you did?

A. That is about my judgment. I exercised my best judgment, was one of the reasons.

Q. As to what?

A. I drew the lines there. The main reason was my exercise of judgment.

Q. And you claim all the lands lying in that zone of assessable value on timber of 70 cents in 1912, for fir, cedar and spruce, and 30 cents for hemlock? I presume those are the exact figures; it is your map.

A. I do not know about that map.

Q. If you come here and look at it, or refer to your own map?

A. I expect them figures are correct; I am assuming that your figures are correct.

Q. Yes, sir, assume that.

A. Yes, sir.

Q. Then in the same manner you formed this zone No. 4, did you, which, for 1912, the timber is assessed at 60 and 30?

A. To shorten the matter up, I would say

that I exercised my judgment in establishing all these zones, in making the zones I took in the surface of the country, the kind of timber and other characteristics that entered into the general topography of the country; everything concerning its physical character.

Q. Do you mean to tell us that every forty in this upper zone, for instance, after you figured it out, figured at eighty and forty?

A. Every one was figured at the same rate.

Q. And every forty, that is, within this zone No. 1, figures out at an assessable value of eighty and forty, does it?

A. Eighty and forty, where it is timber land.

Q. Every forty included in the detailed assessment that you figured out?

A. Yes, sir.

Q. And every forty that you figured out in the detailed manner in which you have heretofore related that lies within this zone No. 4, figured out at sixty and thirty cents for 1912?

A. Yes, sir.

Q. This is true of all these zones?

A. That is true of all these zones.

Q. Were the logging conditions exactly the same with respect to every forty?

A. As I said before, according to my best judgment in the premises, this represents my judgment, and my judgment is based on the knowledge I had at the time (p. 510).

Q. Are the logging conditions of this tract which I point to here now the same as the logging conditions in this tract in yellow, down there?

A. I can't tell you off-hand.

Q. Why did you put the same value?

A. I could not tell you that off-hand, either. My judgment is uniform within the zone." (510).

This is the explanation by the assessor who designed this zone system and drew these lines, of the

method and reason for it, which shows in itself no method, and no reason.

It might appear from first reading his testimony, (pp. 504 to 506) that he had actually utilized the elaborate and complete system of cruises which the county had gone to enormous expense to obtain (contained in the volumes Exhibits 19 and 20), but what he actually did, as he here admits, was: with these books before him, he took a straight edged ruler and drew certain arbitrary lines on the map and said that all the timber lands north of this line were worth, say 80 cents a thousand; those between these lines below were worth 70 cents a thousand, etc., and the only explanation he gives of it is that he "used his best judgment."

The fact that he carried the timber lands on his assessment rolls in separate forty-acre tracts and an assessment was put on each one of these tracts might be misleading, without further analysis. He would carry a certain forty-acre tract on his books under a description of lands, from his cruise books, Exhibits 19 and 20; he would obtain the run of timber on this forty, and the character of it as being fir, spruce, cedar or hemlock. Then he would multiply this by the rate of 80 cents per thousand, or 40 cents per thousand, to get the assessable value of the forty; *but the 80 cents a thousand or the 40 cents a thousand he would obtain*

by reference to his zone map, taking the rate of valuation per thousand that he had devised for all lands within this zone.

It is apparent, therefore, that while the amount of timber and its character as to being fir, spruce or cedar on the one hand, or hemlock on the other, may have been taken from the cruise books, Exhibits 19 and 20, the rate of assessment, and therefore the assessed valuation of these lands, being the product of multiplying the quantity of timber by the assessable value per thousand, was taken from this zone map and the zone map was taken from the assessor's head and not from any method of classifying the lands according to the elements which would really make up their value, and which were contained in the cruise books.

A casual inspection of the cruise books, taking any two or three contiguous forty-acre tracts in the same zone, will show how wholly dissimilar they are in elements of value, and therefore in assessable value, and will demonstrate the fact that their assessment by Hallahan, the assessor, was in no sense based upon their actual physical characteristics, or distinctive elements of value, such as being on rough or smooth ground, being near to or distant from logging streams, etc., but yet, if lying in the same zone, geographically, they were valued alike.

The Board of Equalization for the years 1912 and 1913 was composed of J. C. Hansen, Erickson, Frank Lotzgesell, Clifford L. Babcock, as county treasurer, and John Hallahan, the county assessor. In 1914 the board was composed of the same members except that James Clark, of the west end, supplanted Mr. Erickson of the west end (p. 457).

Now take Frank Lotzgesell of the Board of Equalization. Being offered as a witness for the defendants, he was cross-examined by the plaintiffs, in part as follows (p. 534):

> "Q. While you were sitting on the Board of Equalization, how did you arrive at the value of timber lands, from which you were to put your assessments for taxation purposes; how did you arrive at that value?
>
> (Objection of defendants overruled).
>
> A. I suppose by using our best judgment; that is my judgment.
>
> Q. Well, to use your judgment you must have had some basis of computation. You say you used your best judgment with reference to those timber lands; now, how did you arrive at the value at which those lands should be assessed?
>
> (Objection of defendants, overruled).
>
> A. I do not think I could give any other answer. I used my judgment, what I thought they were; that is all. * * *"

(Page 540):

> "Q. Will you explain the method of assessment and equalization by zones, as those zones appear on the map?
>
> A. Can I explain the method of assessment and equalization?
>
> Q. Yes, sir.

A. No, sir, I cannot.
Q. Have you ever been able to explain it?
A. I don't know as I could explain it."

On reading further the testimony of this witness, on page 549, the court will observe that he hides behind the same cloak as Hallahan, the assessor, in failing to answer the inquiry as to the method of zone assessment or otherwise, by saying that he "used his best judgment."

It appears from the cross-examination of Clifford L. Babcock, the treasurer, that while on the Board of Equalization in 1912 and 1914, he knew nothing about the manner of assessment of property or the rate at which it was assessed; made no inquiry about it or examination of property, but the board simply confirmed the roll as prepared by Hallahan, the assessor (pp. 406 to 475).

J. C. Hansen, chairman of the board, admits the same practice and custom on his part and on the part of the board. At page 642, he is asked, on cross-examination, as follows:

"Q. What rate did you understand when you were equalizing the rolls in 1912 that the timber land of the plaintiffs and others were assessed at?
A. I could not tell you, that would be the outside zone, and in 1912 the assessor fixed it at eighty cents for fir, cedar and spruce, eighty cents and the inside zone seventy cents for spruce, fir and cedar.
Q. But I am asking you at what proportion

of its value did you understand that the assessor was assessing the timber land?

A. I did not ask the assessor. I had my own opinion and I had always gone according to my own opinion. My opinion is that that was assessed at less than one-third at that time."

The Board of Equalization neither raised nor lowered any timber assessments that had been made by the assessor either for 1912 or 1914 (p. 646).

We have then the testimony of four of the five members of the Board of Equalization, being all but one member. Hallahan, the assessor, will give no intelligible explanation of the method or reasons for the zone system. Lotzgesell, Babcock and Hansen in effect say that they knew nothing about it; they accepted the work of Hallahan, the assessor, without question and cannot offer any explanation.

IX.

This classification for taxation by zone system is purely arbitrary and operates unjustly and unequally and the assessment made in accordance with such rules, and taxes levied upon the plaintiffs' lands in pursuance thereof, are void.

This was so held in:

Hersey vs. Board of Supervisors of Barron County, 37 Wis. 75.

This was an appeal from an order denying a motion to dissolve a temporary injunction restraining

the county treasurer from selling lands for delinquent taxes. The case is so pertinent that we quote at length from the opinion therein (pp. 77 to 81):

> "The complaint alleges, that certain rules were adopted by the assessors in 1872, for the assessment of real estate in Barron County, and that the same rules were followed by the assessor and board of review in making the assessment for the year 1873, upon which the tax in question was levied. These rules are as follows: First. Pine on first class driving streams assessed at $2 per M. within the limits of two miles hauling. Second. Pine on such streams of more than two miles hauling, at $1.50 per M. Third. Pine on second class drising streams, as Moose Ear and other streams mentioned, at $1.50 per M. within two miles, and $1.00 per M. beyond. Fourth. Pine on fourth class waters, head of Yellow River, north of Bear Lake, at 50 cents per M. Fifth. Lands entered for farm lands (wild) at from $2.50 to $10 per acre, according to locality; and cultivated, at $6 per acre. Sixth. Cut lands according to inspectors' reports, at 12½ cents per acre.
>
> "It is alleged, that these rules were framed and adopted by the taxing officers with the intent and for the purpose of favoring the firm of Knapp, Stout & Co., owners of large quantities of pine lands in Barron County, and that they operated oppressively upon the rights of the plaintiff.
>
> "The defendants deny that the rules of assessment adopted in the year 1873 were proposed for the purpose of favoring the firm of Knapp, Stout & Co., or were intended to benefit in any manner that firm; and they aver in the answer, 'that the said rules were so proposed and adopted in the government of the said assessment of 1873, for the reason, that under them it was practicable, and practicable only under them, to secure an

assessment fair and equitable, based upon the actual value of the taxable property; and that the said rules were so proposed and adopted in the year 1873 to the end that a fair and just assessment might be had in said town, and for no other or different reason or purpose.'

"It sufficiently appears from this averment, as well as from other admissions in the answer, that these rules were made the basis of the assessment for the year 1873; and assuming, as we may well do, that they were adopted with no fraudulent intent, and with no purpose of favoring any owner of real estate, the question then arises, Was the assessment valid which was made in conformity to them? It appears to us that it was not.

"The statute directs the manner in which real estate shall be listed or valued for taxation. 'Real property shall be valued by the assessor from actual view, at the full value which could ordinarily be obtained therefor at private sale, and which the assessor shall believe the owner, if he desires to sell, would accept in full payment. In determining the value, the assessors shall consider, as to each piece, its advantage or disadvantage of location, quality of soil, quantity and quality of standing timber, water privileges, mines, minerals, quarries, or other valuable deposits known to be available therein, and all buildings, fixed machinery and improvements of every description thereon, and their value.' Sec. 16, ch. 130, Laws of 1868. The listing and valuation are the foundation of all the subsequent proceedings; and this provision prescribes the manner in which they shall be made, with the manifest purpose that the tax levied upon each tract shall be relatively according to its real value. The assessor is required to make the valuation from actual view, and he is called upon to exercise his judgment with reference to each tract, its advantage or disadvantage of location, the quality of the soil, the quantity and quality of standing timber; in

short, he is to consider all the elements which enter into and constitute its value. These are the plain, obvious rules and principles upon which the statute contemplates that the valuation shall be made. By the rules in question, these statutory principles were utterly ignored and disregarded. An arbitrary classification was applied to the real estate. It is conceded that the lands were generally wild, pine lands. The standing pine on what is called first class driving streams was assessed at $2 per M. within the limits of two miles, regardless of the advantage or disadvantage of its location up or down the stream, and wholly ignoring the element of quality in the standing timber. In respect to pine on such streams, which had to be hauled more than two miles, the same arbitrary value was affixed, regardless of its quality or location from the source or mouth of the stream. The same remarks apply to the other classification in the rules. The real estate is valued solely with reference to the quantity of pine timber standing upon it, without taking into account the quality of the pine, its location up or down the stream, or the character of the soil, or those other elements which determine the value of land, and which the statute says the assessor shall consider and regard in making the valuation. That a valuation thus made would necessarily operate unjustly and unequally, seems to us too plain for discussion. True, it is alleged in the answer that it was only practicable to make a fair and equitable valuation of the real estate under these rules, which is equivalent to saying that the law upon the subject cannot be complied with. But if no valuation can be made as the statute requires, we fail to see upon what ground the tax can be sustained. A valuation is essential to lay the foundation for the tax; and if no legal valuation was practicable, it follows that any tax based upon a wholly unauthorized valuation would be illegal and void. The allegation is a *felo de se.*

"But it is said by the counsel for the defendants, that even if the rules above quoted were absolutely followed and strictly pursued by the assessor in making the valuation, yet, if they were honestly adopted as expressive of the judgment of the assessor, there being no question of fraudulent intent, a court of equity would not say the assessment was void. But how can a court of equity pronounce an assessment valid which is in plain violation of law? Real estate must be valued in the manner and upon the principles prescribed by the statute. The assessor may make a mistake in the valuation while honestly attempting to execute the law. Errors of judgment, inequalities in valuation, will intervene in all proceedings of this character. It might not be practicable for the assessor to go over every foot of ground and thus, from 'actual view' of every part of a tract, determine its true market value, at the time of the assessment. But there should be an attempt to substantially comply with the law. Here we feel warranted in assuming, upon the admissions in the answer, that the law was disregarded, the assessor adopting for the guidance of his judgment rules which not only departed from the statutory requirements, but which could not fail in their operation to defeat a fair and just valuation. That such must have been the necessary effect of the rules upon the valuation, seems to us perfectly obvious. As remarked by counsel for the plaintiffs, the idea that standing pine, just two miles from a stream, should be assessed at $2 per M., though of a poor quality, while excellent timber on an adjoining tract, a little further from the stream, is assessed at $1.50 per M., confounds all notions of justice and equality.

"That the assessment made under the rules, and the taxes levied upon the lands of the plaintiffs, were void, and that a court of equity will interfere to restrain the sale, follows from the decisions in *Hamilton vs. The City of Fond du*

Lac, 25 Wis. 490, and *The Milwaukee Iron Co. vs. The Town of Hubbard,* 29 Id. 51. Those cases seem to be directly in point upon that position."

We are aware of the case of Doty Lumber & Shingle Co. vs. Lewis County, 111 Pac. Rep. 562, decided by the supreme court of Washington, November 10, 1910, in which in valuing timber lands for the purposes of taxation:

> "The commissioners before the meeting of the Board of Equalization tentatively established as basis of value 75 cents per thousand feet on all first classes of timber within four miles of a commercial railroad; 50 cents per thousand feet beyond the four miles and within the limits of ten miles of such railroad, and 25 cents per thousand feet beyond the limit of ten miles, with proper deductions for timber of a lower class.
>
> The appellants had a hearing before the Board of Equalization. In raising the assessment upon the timber lands of the several appellants after the hearing, the tentative basis were not strictly adhered to, but the board took into consideration the distance of the property from a logging stream or commercial railroad and contour of the land as affecting the expense of getting the timber to market. In short, it fixed the values on the basis of quality of the timber, and its accessibility to market. * * *"

The Washington court in discussing the above case of Hersey vs. Board of Supervisors of Barron County, says:

> "In that case the fixed value was put upon standing timber within the limits established, without reference to logging conditions and quality

of the timber or to character of the soil. * * *"
(P. 564 Pac. Red.)

The Washington court now referring to the case then before it, continues:

> "The board had before it satisfactory evidence of the value, quality and quantity of the timber upon each piece of land, the character and contour of the land itself, the distance of the timber from logging streams and commercial railroads, and general logging conditions, and from this evidence supplemented by the knowledge of its members, who were under oath to do their duty, it acted as it saw the light; and even if it be conceded that it made mistakes, they were honest mistakes and offered no ground for interfering with its judgment."

Certainly that cannot be said in the case at bar, for while the assessor, Hallahan, had access to the timber cruise books showing all of these features with reference to every forty acres of land, he utterly disregarded them and blocked off the timber lands in arbitrary zones, for reasons which he will not divulge, and the other three of the five members of the Board of Equalization disclaim knowledge of any reason therefor.

X.

Testimony was introduced by the plaintiff showing the actual existence of a conspiracy and fraudulent combination of the taxing officers to discriminate against the plaintiffs' lands and in favor of other classes of

property in Clallam County, and as against these lands and in favor of operating timber lands, from which we give excerpts to aid the court's investigation of the record:

> H. Darwin (p. 145), state fish commissioner. He had visited Clallam County as a representative of the Seattle Times for the purpose of writing up its natural resources, in 1912. He was driven over the roads through the timber by Mr. Hansen, county commissioner and others. Hansen told the witness that the timber holdings of Clallam County were divided into six or seven big groups; that the policy of the timber holders had been to shut out the little timber holders, which had been to retard the development of the county, by having their property assessed at very low valuations. Mr. Hansen said that he thought the proper policy would be to tax the timber men so high that they would either give up their holdings or put in mills and saw it up into lumber.
>
> I think the question came up like this: that these holdings had been locked up; that there was no railroad development and that possibly there had been a gentleman's agreement between the railroads that for a certain length of time they would not build into the Olympic Peninsula and that the policy was to save this timber until such time as it would greatly appreciate in value; that is my recollection of how the matter came up; that they locked that up and was letting it stand there.
>
> Q. What was their method?
>
> A. Their method of circumventing that was to force the cutting of timber, or force its sale.
>
> Q. By what means?
>
> A. The only power they had was taxation. (P. 145).
>
> "* * * They should also increase their

tax rate on that (recruises), and this would enable them to build railroads and highways and develop their county, and also force the cutting of the timber, or sale of the timber to other parties. (P. 146).

Two days after the occurrence. Darwin wrote his article in which he said 'Hansen favors a policy of taxing the timber holders so high that they will find it unprofitable to long keep their vast tracts off the market.'" (Pp. 148-149).

Mr. Hansen's atempted explanation of this is found at pages 638-643. In the course of which he demonstrates the fact that as chairman of the Board of Equalization he did not know at what valuation they were assessing the timber.

"Q. Didn't you propose to assess the timber high?
A. No, sir, not high.
Q. At what did you propose to assess it?
A. Equally.
Q. Equally?
A. In 1912—I left it entirely to the assessor." (P. 642).

E. H. GRASTY, a witness for the plaintiffs (p. 209), being in the bond brokerage and mortgage loan business in Portland, Oregon, visited Port Angeles in February of the year 1914, to look into the matter of loans and investments on his own behalf and to ascertain for the plaintiffs the values of real estate in Port Angeles and Clallam County (p. 210). There he had an interview with the following people:

Witness called Assessor Hallahan's attention to

the discrepancy that he found to exist between the actual assessed value of property in Port Angeles. Hallahan told him that if he assessed the property at what he was supposed to assess it, 50 per cent of its real value, he would break every property owner in Port Angeles (pp. 210, 211). Hallahan pointed out to him the Morse property on the corner of Laurel Street and First Street, and said:

> "That property is worth $15,000, but it is assessed for $800 to $1,000."

That, of course, was merely one instance of several that came to witnesses's attention.

> "Q. Did he give you any explanation of why it was assessed at $800 if it was valued at $15,000?
>
> A. He simply said that there was an agreement among the local people in assessing the property in Port Angeles for what it was actually worth; that it would break the property owners. In other words, that it would break them and that he could not do it."

And in fact he said that this had been the practice ever since he, Hallahan, was in office. (P. 212).

On another visit made in May, 1914, Grasty, in company with Mr. King, of Portland, went to Mr. Hallahan at his office, at which time, on inquiry, Hallahan explained to King and Grasty the reason for the difference between the real and assessed value of property, as follows (p. 213):

> " 'Well,' he said, 'we grade property in the county and assess it accordingly. Now,' he said, 'we assess timber in the county more than we do anything else.' And I asked him why he did that, and he said 'that the reason they assessed the timber higher than they did anything else was because, on account of the great fire protection in this state, that the timber owners were holding their timber there, and that they were assessed these high taxes in order to make them operate; in other words, to build logging roads and to cut their timber.' "

Hallahan further told him that this practice had continued right straight through; and his further reason for assessing property lower in Port Angeles was because of a certain amount of the funds, taxes that were taken by the county and the state for their share, contributing their share for the running expenses of the state and county, and the reason they kept their local taxes down was for the purpose of depriving the state and county of taking away from Port Angeles any more money than they could possibly help. (P. 213).

The witness asked Hallahan for a letter setting forth these matters, which he refused to give. (See Hallahan's explanation of this, p. 486).

Witness also talked with Mr. Hansen, the county commissioner, who said to him (p. 215):

> "Mr. Grasty, we make it our business here to soak the outside fellow, and the fellow that has got the more money, and with our local peo-

ple we keep these assessments down. We had made it a rule to keep the assessments down, the taxes of Port Angeles property. We have a lot of timber standing in this county, owned by eastern interests, and it is our purpose to get after those fellows and soak them heavy taxes so they will begin operations, and it will all benefit Port Angeles."

Upon Grasty's request, Hansen gave him a letter to this effect, which was introduced in evidence as plaintiffs' Exhibit L (p. 215), which letter reads as follows:

"Port Angeles, Wash., May 8, 1914.

"Mr. E. H. Grasty,

"Portland, Oregon.

"Dear Sir:

"Replying to your inquiry, why is there such a difference in actual valuations and assessed valuation on Clallam County property, you particularly refer to lots 15, 16, 17, 18, block 16 N. R. Smith Subdivision. My personal knowledge as to these lots I would say, will now sell from $9,000.00 to $9,500.00. They are assessed on an average of $700.00. I have been for the past three years, and am now, a member of the Board of Equalization for Clallam County, and I will give you the reasons why there is such marked difference. In the first place, Port Angeles has always been a very quiet, side-tracked city, and it has always had, and has now, a population that has always had confidence in its future; that its location and large timber resources must some day make a city of considerable size; for that reason property of the above nature has always sold at a good round figure, but as there never was an income from it, the assessor has always borne in mind that he could only assess such property ac-

cording to what it ought to pay, without damaging the owner of non-income property. During my time in office we have gone over the tax roll every year and always have upheld the assessor in his judgment and taken the same view of it. Most all of Port Angeles property is in the hands of people of small incomes and that has always had its weight with the assessor—there has never been a disposition to drive any property holder to the wall. If you will take time and look over the records just being completed by the assessor, you will find that he has made raises for this year only in such places where he was compelled to do so on account of its selling value.

"The above statement also holds good for lots in block 20, Townsite of Port Angeles, lots in that block are worth from $3,000.00 to $3,-500.00, and assessed at about $300.00. I can take you all over this city and show you the same conditions exists in any part of he city, and so long as the assessment is equal we are satisfied; sofar we have always had enough revenue to pay running expenses. The only time this city run behind was in the early days before there was very much property to tax.

"Hoping that the above information is as complete as you require, and if not, that you will call on me for further information, I am,

Yours very truly,

"J. C. HANSEN,

"President Board of Equalization."

Hansen, going upon the stand thereafter (p. 526), admitted that he wrote the letter; that he wrote it at his own dictation and out of the presence of Grasty.

Grasty had an interview with Mr. Babcock, the treasurer, in April, 1914, at Port Angeles. Babcock told him substantially the same things as Hansen and

Hallahan had regarding the low assessment of property in Port Angeles.

(P. 217). Babcock took Mr. King and Mr. Grasty for a drive and in answer to their complimenting the condition of the roads, Babcock informed him that the roads were built out of the timber lands in the western part of the county. (P. 218). And on the subject of taxation, he gave Grasty a letter, dated April 29, 1914, filed as plaintiffs' Exhibit M, which is found at page 771 of the Record, and reads as follows:

> "Port Angeles, Wash., April 29, 1914.
> "Mr. E. H. Grasty,
> "Portland, Ore.
> "Dear Sir:
> "In regard to the valuation placed upon the assessment rolls by the county assessor for taxation purposes of Clallam County for the City of Port Angeles.
> "The people of Port Angeles have been afraid of high taxes and believed that if the valuation of former years was raised to anywhere near the true value of property at the present time, their taxes would increase in like manner and the assessor has been influenced by their attitude.
> "As a matter of fact, nearly all the lots in Port Angeles are now upon the rolls at from 10 to 20 per cent of their true value and consequently the tax levy is very high—nearly to the limit in every taxing district.
> "Out-of-town investors are appalled at our high levy but if the valuations were raised to somewhere near their true value and the levy reduced in accordance, I think—am sure—our taxes would not look so high and would compare very

favorably with other towns of like population of Port Angeles.

"Very respectfully,
(Signed) "C. L. BABCOCK,
"Treasurer of Clallam County."

Babcock, afterwards called by the defendants, admits the writing of the letter and endeavors to explain it, but simply said he lied to help out the Elks Lodge in an attempt to get a loan from Mr. Grasty. (See p. 449, and cross-examination, beginning pp. 456, to 470).

Grasty, on one of these visits, interviewed also Mr. Levy, a citizen of Port Angeles, who stated to him in substance about the same in regard to the low assessments, as Babcock and Hansen (pp. 222, 223), and gave him a letter to this effect (plaintiffs' Exhibit N), which is set out in the printed record at p. 772.

Levy, called by the defendants, admits the writing of this letter (p. 592).

"Q. (By defendants' counsel): Now, you say you gave him a letter pursuant to his request; what suggestion did he make as to the contents of the letter that he wanted you to give him?

A. He didn't make any suggestion as to the contents. I made it up out of my own head.

Q. Didn't he indicate what the letter should contain?

A. He wanted some explanation. He did not seem to care what kind of an explanation I gave him. So I had to give him something.

Q. I hand you plaintiffs ExhibitN; I will ask you to look it over and see whether or not that is the letter which you gave him?

A. That is the letter—that looks like the letter that I wrote."

The witness was deputy county assessor of Clallam County in 1910 (p. 592).

Grasty had an interview with Thomas T. Aldwell, a citizen and real estate man of long standing in Port Angeles, who said to him, in part:

> "Mr. Grasty, I am not surprised at that, because the people who underwrote the improvement bonds that we have just voted and advertised here for regrading this city, were amazed at the very low taxable value of the property, and what we claim as its actual value. * * *"

Aldwell further said to him (p. 224):

> "Mr. Grasty, we are united here in an effort to hold down our taxes. * * * There is a great deal of timber in this county that is not being operated. The people are holding it," and he said, "Just confidentially, we are making the timber interest bear the burden of the expense of taxation here, and that is the reason for this condition." * * *

Mr. Aldwell wrote him letters along the same line as the preceding, which had been brought out in the testimony of Aldwell himself (p. 155), introduced in evidence as plaintiffs' Exhibits E and F, which are found in the record at page 775, being dated April 29, 1914.

Grasty had a talk with Mr. Lutz, a banking man of Port Angeles, who told him substantially the same as Mr. Levy about the low assessment. (p. 225).

Grasty had a talk with Mr. Christensen (p. 226), in which Christensen stated substantially the same as Levy and Lutz about the low taxation, and this further (p. 228):

> (Mr. Grasty): "On this same afternoon I told Mr. Christensen that my previous investigation had shown an awful discrepancy in the real and actual value of property at Port Angeles, and the low taxes that were being assessed against the property owners, and he said 'Yes, Mr. Grasty, the assessed value of property in Port Angeles is really very low, but there is a condition existing here, Mr. Grasty, that is very shameful, and that is, the officials here are assessing the timber owners enormous taxes for the purpose of making them operate. * * *"

Mr. Christensen gave Grasty a letter upon that subject, which is introduced as plaintiffs' Exhibit "P" and is found at page 773 of the record, from which letter we quote in part, the following:

> "It has been the custom in past years that the assessor of the county assessed property at a nominal value, or about 30 per cent of the actual value of the property; accordingly, I would estimate that present market values approximately would be six times the present assessed valuation of real estate for taxation purposes. This, of course, is meant in a general way and may not apply to each separate case." (P. 774).

Christensen was not called by the defendants to refute this. He was cashier of the Citizens National Bank for the past ten years. (P. 794).

Grasty had an interview with Mr. C. C. Henry, a citizen of many years' residence at Port Angeles (p. 231). In answer to the witnesses' inquiry as to the discrepancy between actual and assessed values in Port Angeles, Mr. Henry said:

> "Mr. Grasty, the officials here have entered into an agreement among themselves to tax the timber interests higher than anybody else in the county."
>
> "He said they had made it their business to hold their taxes at home down, but to make those rich eastern timber concerns operate. In other words, their object in assessing them so high is to make them cut their timber and thereby bring profit to the people of Port Angeles." (P. 231).

C. C. Henry, thereafter put upon the witness stand by the defendants, admitted, upon inquiry of plaintiffs' counsel, a list of property he had given to Grasty showing his (Henry's) valuation of the property and its assessed value, which was put in evidence by the plaintiffs as Exhibit CC (p. 607), a copy of this exhibit being found at page 779 of the record. From this it appears that his town lots, valued at $800, were assessed for $180. Those valued at $600 were assessed at $170, and others in a similar proportion, and his timber lands valued at $1,080, were assessed at $740,

and those valued at $640 assessed at $425, thus corroborating the statements made by Grasty.

Grasty details the meeting with the committee of the Elks Club at which were present Mr. Hansen and Mr. Babcock (p. 232), on which occasion Grasty asked what was the actual value of the lots under discussion:

> "Mr. Hansen spoke up and said that the property was assessed for 20 per cent of its value, and Mr. Babcock contradicted him, saying, 'No, it is nothing of the kind.' He said, 'The property has always been assessed for 10 per cent or less of its actual value.' Mr. Hansen did not dispute that, nor did anybody else in the room, but everybody acquiesced in that statement by their silence."

Mr. King, a witness produced on behalf of the plaintiffs, lived in Portland, Oregon; was the son of E. A. King, who was a client of Mr. Grasty's. Witness is assistant manager of the Portland branch of the American Surety Company. He had accompanied Mr. Grasty to Port Angeles on the visit made in May, at the instance of Mr. Grasty, who said that there might be some investments there that would interest witness' father. Grasty also told him that he might desire him to corroborate a report which he, Grasty, would make of the assessed and appraised value of property down there. Grasty did not tell him what the information was wanted for, nor did he know that any lawsuit was involved.

King's testimony runs from pp. 249 to 255 and corroborates substantially Grasty's interviews with Hallahan, which Mr. King details as follows (p. 251):

> "Mr. Hallahan was in his office when we called shortly before noon, and we were talking about the method of assessing the property. Mr. Hallahan said to us that the property was graded for the purposes of assessment. He said that 'the timber was assessed higher than any other class of property, and for the purpose of making them operate.' He said, 'If it wasn't necessary for them to pay high taxes they would be content to leave the timber standing in Clallam County and cut elsewhere. They would leave the timber in Clallam County until the last, because of its fire protection, the excessive rainfall in the timber belt diminishing the probability of loss from fire."
>
> "Q. What effect, if at all, did he say this was going to have upon their operating and high taxes?
>
> A. He said that they could not afford to pay the high taxes without operating; that that was the purpose of forcing them to operate."

XI.

After the filing of the suits herein, Causes Nos. 2905 and 2906, in May, 1914, by plaintiffs, attacking the taxes for 1913, the assessed values of timber lands were raised by the assessor, Hallahan, and the assessment concurred in by the Board of Equalization, while the timber lands were worth less, rather than more. Let us see what explanation the taxing officials make of this change.

While there is a variance in the testimony of

the five or more witnesses for plaintiffs, and the seven or more witnesses for the defendants on the relative value of exterior and interior timber, there is absolutely no variance, but the testimony of each and every one of these witnesses was expressly to the point, that there had been a gradual depreciation in the value of timber in Western Washington from 1910 to the time that they were on the witness stand in 1915, and that this was a gradual decline, some of them putting it from 12 to 15 per cent from 1912 to 1914, and not one of the twelve or more witnesses but said expressly that timber lands were worth no more on March 1, 1914, than on March 1, 1912. (See references in brief on first point discussed, pp. 101-120.)

Hallahan, the assessor, being asked to explain this (p. 511): He admits that the timber lands were assessed at 14 per cent more in 1914 than in 1912. His first excuse for this was the claim that he had not the full cruises in 1912 that he had in 1914 (p. 511); but on further cross-examination he is forced to admit that the additional cruises concerned only the lands east of Range 9 and west in Ranges 15 and 16, and had nothing to do with the lands in suit (p. 512). He then claims that the building of the Milwaukee Railroad line from Port Angeles west to the line of Range 9, which road on March 1, 1914, was graded,

increased the value of these lands (p. 513). (It will be remembered that this railroad runs to Mike Earles plant on Port Crescent, some 45 miles from the heart of the plaintiff's lands.) He shifts from this to the claim that he discovered, in his imagination that there was an outlet of a possible railway that might be built by way of Lake Crescent (p. 513), but finally falls back upon the conclusion that he thought the timber was not assessed high enough in 1912 (p. 514).

At page 519, the witness says, on re-direct examination, that while the timber assessment was raised in 1914 10 per cent, city property in Port Angeles was raised 40 per cent; but upon further inquiry from plaintiffs' counsel, it turns out that what he meant was that the aggregate volume of property assessed as town property was increased to this amount and not that the rate of assessment or valuation was increased thus (pp. 522 to 524), although as a fact the city assessments were raised in 1914 as hereafter shown.

Hansen, chairman of the Board of Equalization, admits that the timber lands were worth no more in 1914 than 1912 (p. 643) and the only reason we can get from him was that they were not assessed high enough in 1912. But the only discussion that this chairman of the board had was the "discussion with himself" (p. 644) and he frankly explains the judicial

consideration that the subject of taxation obtained between the Board of Equalization and the assessor, as follows (p. 645):

> "Q. At what basis did you understand at the time you were acting upon the Board of Equalization in August, 1914, that the assessor had intended to assess this timber?
>
> A. I do not understand; I do not know what he did, and I never knew what he had assessed the timber at until the Board of Equalization met; because John Hallahan is one of the kind of fellows, and I would say 'John what are you doing,' and he would say 'I can get my knowledge on the first Monday in August the same as everybody else did. That is the kind of a fellow John Hallahan is." (p. 646.)

The witness says that the assessor's valuations were not changed by the Board of Equalization, either raised or lowered (p. 646).

Frank Lotzgesell, the third member of the Board of Equalization, being asked his explanation of this raise in valuation, admits that the plaintiffs in all of these suits made a protest before the Board of Equalization against this raise (p. 537); admits that the raise was some 14 per cent (p. 539), but refuses to give any explanation whatsoever of why such raise was made, other than that the assessor made it and the board passed it without discussion, and the evident conclusion is without consideration (pp. 538 to 540).

Babcock, the treasurer of the county and fourth member of the board, admitted the same thing, namely, that the assessment on the timber lands was raised in 1914 by about 14 per cent (p. 479), and shows that he does not know anything about it as the Board of Equalization passed perfunctorily on the assessment rolls as made by the assessor and he, Babcock, didn't know at what rate the timber lands were being assessed (pp. 470 to 477).

At page 471 the following occurs: Babcock, on cross-examination, is asked if he knew at what rate the assessor intended or purported to assess the property in 1912.

> "A. No, I do not.
> Q. And you did not know at the time you equalized the taxes in 1912 or 1914?
> A. No, sir.
> Q. Was there any discussion before the board as to the rate that the assessor had adopted or should adopt?
> A. No, sir."

This covers the assessor and with him four out of five of the Board of Equalization. The other member of the board did not testify in the case.

As showing the actual prejudice of this raise of assessment in 1914 over 1912 against the plaintiffs' lands we tabulate the lands of the Clallam Lumber Company as assessed in the different zones, taken from the exhibit attached to the Bill and admitted

by the defendants, for the year 1913 and the year 1914. The following schedule is the lands of the Clallam Lumber Company shown in Causes No. 2905 and No. 2907:

SCHEDULE "A", CAUSES NOS. 2905 AND 2907

Zone 1.		
1912 and 1913	1914	Raise
$792,956.72	$904,095.38	$111,138.66
Zone 2.		
85,291.13	93,220.39	7,929.26
Zone 3.		
569,407.03	639,111.70	69,704.67
Zone 4.		
23,515.80	29,163.63	5,647.83
Zone 5.		
1,919.10	2,272.88	353.78

111,138.66
7,929.26
69,704.67
5,647.83
353.78

$194,774.78 Total Raise.

From the foregoing it appears that the assessment of the plaintiffs' lands was raised in 1914 over the year 1913 by the amount of $194,774.20.

SCHEDULE "B"—RUDDOCK AND McCARTHY LANDS—CAUSES NOS. 2906 AND 2908

Zone 2.		
1912-1913	1914	Raise
$479,990.00	$561,395.00	$81,405.00

XII.

The taxing officers of Clallam County favored those operating manufacturing plants by a low assessment at practically a nominal value of less than 10 per cent of the real value.

The only industrial plants in the neighborhood of Port Angeles in 1914 were the Aldwell, or Olympic Power plant, the Mike Earles Mill, or Puget Sound Mills & Timber Company, a salmon cannery, and some shingle and saw mills (p. 142).

The Olympic Power Company had constructed in Clallam County a hydro-electric plant on the Elwah River at a cost, as reported to the Public Service Commission of the State of Washington, of $3,415,-526.94, with a capacity of 8,000 net electrical horsepower (p. 157). It was built in the fall of 1910. In October, 1912, a portion of the dam washed out. Repairs to this were completed in October, 1914 (p. 177). It was, however, in operation and generating power in March, 1914 (p. 160. Thomas T. Aldwell, the promoter of it, and president and general manager of the company, called by the plaintiffs, testified that it had cost the above sum in its construction, including the repairs due to the blowout (p. 161). On December 31, 1914, he had furnished a statement to the Public Service Commission of the State of Washington as provided by law, which statement, identified by the witness, was

introduced in evidence as Plaintiffs' Exhibit H, which will be found among the original exhibits, so lettered. This report showed the cost of the plant as $3,415,-526.94. The lands used in the operation of the property were placed at a valuation of $1,530,517. All of these lands lay in Clallam County and were assessed for the years 1912, 1913 and 1914 at about $30.00 per acre (p. 164).

Referring to Plaintiffs' Exhibit T, which is a statement taken from the assessment roll of 1914. This shows the total assessed valuation of this plant, including all personal property, at $69,640.00 and the assessment on its real property at $13,795. (This being contained on the first three sheets of Exhibit "T.")

While the temporary washout of this company's dam might excuse the county assessor in making a liberal reduction in his assessment, we think that some other ground must be looked for to explain why this plant, carried on the company's books at a value of $3,415,526 and over, should be assessed at less than $85,000.

Hallahan endeavors to explain this in part (p. 623) by saying that this plant was assessed in three different counties, but Aldwell, the manager and president, says that the land (and of course the plant thereon) was practically all in Clallam County (p.

164); so that only a portion of the transmission lines would be left to tax in other counties.

The Puget Sound Mills and Timber Company, a saw mill (sometimes referred to as the Mike Earles Mill), had been completed in April, 1914. Aldwell reported that the insurance surveyors said it was the best equipped mill on the Coast. It would employ 800 men, and would cut 400,000 feet of lumber per day (p. 157).

E. W. POLLOCK, an expert appraiser, called by the plaintiffs, appraised this mill property at the time of the trial from personal examination as being of the then value of $654,689.15, the items being shown in detail in Plaintiffs' Exhibit EE (found in the original exhibits). Witness had gone through the plant with an assistant, listed each piece of machinery and each piece of property and had made estimates from price lists of duplicating such machinery, and added to that his own estimates of the cost of installation (p. 679). In this list under the head of real property is included only the buildings and structures, the witness not having included any land, not knowing anything about the land value (p. 680). Witness had visited the mill some three years ago, during its construction, when appraising other property (p. 682) and was positive from what he learned at that time and subsequently that the mill was in operation in

March or April, 1914, and he could state from his experience that all the machinery which he had estimated must have been in place there several months before (p. 682).

This witness had been in the appraisal business for fourteen or fifteen years. His firm had appraised about 750 plants in the State of Washington, Oregon and British Columbia (p. 196) and he had been employed to appraise all the manufacturing plants in Chehalis County for the assessor and for the county board in 1914 and 1915 (p. 204).

Referring to Plaintiffs' Exhibit "T" (in original exhibits), on page 4 will be found the assessment of this Mike Earles Mill property for the year 1914 at $87,450.

Hallahan, called thereafter by the defendants to tell how he assessed this mill property, said substantially (p. 623) that he went down on the 17th of March, alone, and looked over the property. On cross-examination (p. 631) he said he made no list of the machinery or property, no memoranda whatsoever, carried it around in his head until the month of June or July, when he put this assessment on his books of $87,450 without any further data or information before him (p. 635).

XIII.

ASSESSMENT OF SHINGLE MILLS

The appraiser, Pollock, at the rquest of plaintiffs, had personally examined and appraised the value of the following shingle mills in the neighborhood of Port Angeles and had obtained the assessor's figures of the assessments thereof for the year 1914, and there was introduced in evidence and filed in connection with his testimony Plaintiffs' Exhibit K, giving this data. We tabulate his figures with reference to the page of the Record where his testimony is found as follows:

Plant—	Record Page	Page of Report	Appraised Value	Assessed Value for 1914
Mason & Babcock.....	196	1	$ 4032.00	$ 700
Howell-Hill-Ray Shingle Mill	197	2	4900.00	1590
McKee Box Factory	198	3	656.00	100
Superior Shingle Mill Co. ...	198	4	2352.00	No assessment found
Ecret Mill	198	5	3483.75	550
E. R. Waite Shingle Mill...	199	6	3045.00	700
Hansen & Glenert Mill.....	199	7	5636.25	1060
Brown & Drury Shingle Mill	200	8	2173.32	1200
Skavdal Shingle Mill	200	9	4564.00	1500
Sturtevant & Pelerin	201	10	4808.00	1475
Fillion Saw & Shingle Mill..	201	11, 12	17786.25	8265

Witness explains the method of his appraisal valuation (Record pp. 204 to 209).

Hallahan, afterwards called by the defendants, attempts to explain his assessment of these shingle

mills (pp. 618 to 635) only to demonstrate, as we contend, that he assessed them at a nominal value only.

XIV.

All the banks in Clallam County were assessed at a flat rate for 1912 and 1914 at 10 per cent of their capital stock. (See cross-examination of Hallahan, beginning at page 514.)

The Port Angeles Trust & Savings Bank, with a capital stock of $25,000, was assessed at valuation of $2,000. The Bank of Clallam County, with a capital stock of $25,000, was assessed for 1912 at $3,000 (p. 515).

The Citizens National Bank of Clallam County, with a capital stock of $25,000, was assessed at $2,000 p. 516). The Bank of Sequim in 1912, with a capital stock of $10,000, was assessed at a valuation of $1,200 (p. 516). The same rate of taxation was applied to all banks, namely, 10 per cent (p. 517).

Note the shifting demeanor of Hallahan, pages 514 to 518.

See testimony of Hansen, chairman of the Board of Equalization for 1912 and 1914 (p. 662), who admits this method of assessing banks at the flat rate of 10 per cent of the capital stock; admits that Mr. Babcock, the county treasurer, was a director during that time of the Port Angeles Trust & Sav-

ings Bank, and that he, Hansen, was at all times involved in this suit, a director of the Citizens National Bank (p. 662). (Note Hansen's examination upon this subject, pp. 660 to 665).

As further evidence upon this point, see Plaintiffs' Exhibit T (original), last sheet; also the deposition of Schumacher (Record pp. 743 to 747, and Christensen, pp. 748 to 750).

XV.

The assessor and the members of the Board of Equalization were, in a measure, a judicial body to honestly and fairly assess the properties of the plaintiffs in their county, equally and uniformly according to law. And when called upon to answer for their stewardship in a charge of fraud and conspiracy, it was certainly due from them and becoming of them, as a matter of law, to answer frankly and to explain fully the method and reasons for their assessment. Now observe how they met this:

In paragraph XIII of its Bill (reference is here made to Cause No. 2905 and to the Record thereof) the plaintiff, Clallam Lumber Company, charged that it had been the custom and practice of counties in the State of Washington for some time to assess property at from 35 to 50 per cent of its true value, which custom had been recognized and acquiesced in by the

State Board of Equalization; and that the assessor of Clallam County gives out and pretends that for the year 1913 he assessed taxable property in Clallam County on a basis of 53 per cent of its true and fair value in money, and that the Board of Equalization of Clallam County gives out and pretend that they equalized and approved the assessments on the same basis, but the plaintiff claims that they had not followed this practice with reference to the timber lands in the interior, but had assessed them at a gross excess over 53 per cent of their true and fair value (p. 11).

The defendants (p. 63) denied the existence of this practice among the counties at large or with Clallam County; denied that they give out or pretend to tax or to equalize property in Clallam County "upon a basis of 53 per cent of its true and fair value in money, or upon any other or different basis than that provided by the laws of the State of Washington at the time the assessment for the years 1912 and 1913 were made." Admit that the interior timber lands of the plaintiff were assessed and equalized at valuations in excess of 53 per cent of their true and fair value in money and deny that other properties in Clallam County, real and personal, were assessed at less than 53 per cent of the true and fair value thereof in money (p. 64).

In its Bill, paragraph XIV, plaintiff had charged

that its timber lands and other interior timber lands were assessed upon a basis of approximately 83½ per cent of their true and fair value in money (p. 12).

Defendants, answering this in their amended answer (p. 64), paragraph XIV, say:

> "Deny that said assessment for the year 1913 was made upon the basis of 83½ per cent or upon any other or different basis than the true and fair value in money of all the property assessed; deny that no property in Clallam County save the timber lands owned by the plaintiff, and certain other timber lands similarly situated were assessed in said year 1913 at so great a proportion of its true value in money * * *"

In paragraph XXIV of plaintiffs' Bill (p. 20) it was alleged that by Section 9112 of Volume III of Remington & Ballinger's Annotated Codes of Washington it is provided that all property shall be assessed at not to exceed 50 per cent of its true and fair value in money.

In their Amended Answer, second affirmative defense, paragraph II (Record p. 78), the defendants plead that this law did not apply to the taxes of 1913 because it did not become operative until after the 12th day of June, 1913.

This was certainly a solemn and binding committal of the defendants to the fact that they had not assessed and had not intended to assess the plaintiff's lands or any other property of Clallam County

at 50 per cent of its actual value, but at its full value.

But as the trial progressed and the defendants realized that they were caught, as the saying is, "with the goods on them," they realized that the evidence that they could produce would no longer justify the assessment at the full value of 100 per cent of the properties, so they thought they would shift their ground and claim that they assessed at 50 per cent, as well as running up the actual value of the timber. And so, at pages 185 and 186 of the Record, counsel for the plaintiff, upon certain objections to testimony by defendants' counsel, demanded that the defendants declare formally whether they were contending that the properties were assessed at 50 per cent of their true value, and if not at what rate, and the following occurred (p. 187):

> "THE COURT: I know you are presuming if there is a statute there that these officers followed the law.
>
> MR. FROST (for defendants): The statute provides, and we deny the constitutionality of the statute. The statute simply provides that property shall not be assessed over fifty per cent of its value.
>
> THE COURT: Do you deny that it is constitutional?
>
> MR. FROST: We deny the constitutionality of the statute. We have set that up in our answer.
>
> THE COURT: Then you disclaim that it was assessed at fifty per cent?

MR. FROST: We are disclaiming that it was assessed at fifty per cent.

THE COURT: You are disclaiming that there was any effort to keep it down or to keep it at fifty per cent?

MR. FROST: We are disclaiming that it was any effort to keep it down or to keep it at fifty per cent. * * *"

Now take the testimony of Hallahan, the assessor, on cross-examination by the plaintiffs (p. 502):

"Q. Mr. Hallahan, on what basis did you assess the property in 1912 in Clallam County?

A. What do you mean by 'basis'?

Q. Did you assess it at its full market value, or at a percentage of its market value?

A. Does that enter into this case? I thought my assessment was on the files here. I thought my assessment was on trial before this Court. I thought that was for you people to determine.

Q. (Question read).

A. I did not assess it at its full market value.

Q. At what value did you assess it?

A. Do I have to answer that question?

THE COURT: Yes, sir.

A. What percentage you mean, don't you?

Q. At what percentage, yes sir.

A. Is that what you have reference to?

Q. Yes sir; at what percentage did you assess it at?

A. The percentage I assessed in 1912?

Q. You have heard the question and you know all about it; now answer it.

A. That was for 1912. The percentage that I assessed all the property of Clallam County?

Q. Yes sir.

A. Around about fifty per cent.

Q. Did you assess the timber lands at fifty per cent?

A. I endeavored to do that.

Q. And the city property at Port Angeles at fifty per cent?

A. I endeavored to the best of my ability, and the information at hand at that time, to assess property at about fifty per cent.

Q. What do you mean by 'about fifty per cent'?

A. I mean around about fifty per cent.

Q. How near around about it?

A. You want me to determine why and how I done it?

Q. Answer the question. How near around about fifty per cent you assessed the property in 1912?

A. I assessed it as near fifty per cent as I could.

Q. Was it your intention to assess it at fifty per cent, or at fifty-one per cent?

A. Fifty per cent."

* * *

The witness, having made the plunge, splashes around quite freely for several pages on the fifty per cent basis. Then follows the witness' further quibbling and evasions about the method and reasons for the zone system heretofore pointed out.

Hansen, the chairman of the Board of Equalization, asked as to what rate he assessed the timber (p. 642):

"Q. At what did you propose to assess it?

A. Equally.

Q. Equally?

A. 1912—I left it entirely to the assessor.

Q. What rate did you assess it in 1912?

* * *"

(Objections by defendants).

"Q. * * * What rate did you understand when you were equalizing the rolls in 1912 that the timber land of these plaintiffs and others were assessed at?

A. I could not tell you; that would be the outside zone, and in 1912 the assessor fixed it at eighty cents for fir, cedar and spruce, eighty cents, and the inside zone seventy cents for spruce, fir and cedar.

Q. But I am asking you at what proportion of its value did you understand that the assessor was assessing the timber land?

A. I did not ask the assessor. I had my own opinion, and I have always gone according to my own opinion. My opinion is that that was assessed at less than one-third at that time." (p. 642.)

See also this witness' testimony at pages 645 and 646. At page 646 the witness admits that the Board of Equalization did not raise or lower any of the timber valuations put upon the roll by the assessor.

Take now the testimony of Babcock, the treasurer (p. 466):

"Q. You were on the board, I think you said, in 1913, as well as 1914?

A. Yes si.r

Q. On the Board of Equalization?

A. Yes sir.

Q. What did you assess the property at, what rate did you assess the Port Angeles property at in the rolls of 1912?

A. We did not assess the Port Angeles property at all.

Q. What did you equalize it at?

A. We did not have any tax rate.

Q. What did you pretend to equalize it at?

A. To have all the property as near alike, I suppose, regardless of percentage.

Q. What value did you place upon the properties for the purposes of equalization, fifty per cent of its value, or one hundred per cent of its value?

A. We did not have any occasion to place any valuation.

Q. You did not gauge with reference to its actual value or fifty per cent of its value?

A. Only in comparison.

Q. Comparison with what?

A. Other property.

Q. Just other property?

A. Yes sir.

Q. Then the Board of Equalization, in passing upon the roll of 1912, paid no attention to the assessed value of property in Port Angeles as to whether it was put down by the assessor at half its value or at one hundred per cent of its value?

A. No sir.

* * *

(Here follows a discussion on the Court's ruling on objection.)

Q. That doesn't answer the question. Did you consider the property as assessed on the roll of 1912 when it was before you for equalization as on the basis of fifty per cent of its actual or market value, or as assessed at one hundred per cent of its market or actual value?

A. Neither one.

Q. Neither one?

A. No sir.

Q. You paid no attention to that standard?

A. No sir.

Q. Is that true of the equalization of the rolls of 1914?

A. I think so.

Q. The same thing?

A. I think that held good during all of my official connection with the Board of Equalization."

* * *

Lotzgesell, the fourth member of the Board of Equalization, in his examination (pp. 540, 546 to 548) shows that, as heretofore outlined, he had no knowledge of what rate the properties were assessed or intended to be assessed at, exercised no judgment whatever but simply O K'd the assessor's returns.

After the close of the evidence in this case, and at the time of the argument thereof, the defendants asked leave of the court to amend their answers filed in the cases, in order, as they contended, to make the allegations conform to the proofs in the particulars hereinafter set out. This was objected to by the plaintiffs on the ground that the proposed amendments did not conform to the proofs, but were directly contrary to and inconsistent with the proofs, and contrary to the issues made by the defendants and the theory upon which the cases were tried by the defendants, and were unfair to plaintiffs (Record p. 757).

The objections were overruled and the amendments allowed, to which the plaintiffs reserved exceptions.

Thereafter, on the 3rd day of February, 1916, the defendants filed in the several cases their so-called Second Amended Answer, containing these amend-

ments allowed by the court as aforesaid, which are set out on pages 82 to 86 of the Record, to which amendments, as embodied in the answer filed on February 3, 1916, the plaintiffs filed their exceptions, which were allowed and signed by the court on said day (pp. 829 to 831).

These amendments, with their contrast to the original pleadings are best set out, perhaps, in the Assignments of Error V and VI, from which we repeat the following (pp. 839 to 841):

> (a) "In paragraph XIII of their first amended answer the defendants had denied the existence of the practice amongst assessors of the various counties and particularly Clallam County, of assessing property at from 35 to 50 per cent of its true value, and had denied the recognition of such custom or practice by the State Board of Equalization" (p. 63, par. XIII, defendants' First Amended Answer).
>
> In said Second Amended Answer they
>
> "Admit the practice by assessors and taxing boards of the custom therein referred to and admit the pursuit of such custom by the county assessors and its recognition and acquiescence by the State Board of Equalization"—

meaning thereby the custom of county assessors of assessing property at from 35 to 50 per cent of its true value (p. 82, Stipulation as to Contents of Second Amended Answer).

(b) In their former answer they had

> "Denied that the assessor of Clallam County gives out and pretends that for the year 1913 he assessed taxable property within Clallam County upon the basis of 53 per cent of its true and fair value in money, *or upon any other or different basis than that provided by the laws of the State of Washington at the time the assessment for the years 1912 and 1913 were made.* (Italics our own.)
> Defendants' Answer, p. 63, par. XII.)

In their Second Amended Answer they plead the above denial, omitting that portion in italics.

(c) In their First Amended Answer, paragraph XII, they had plead as follows:

> "Admit that the interior timber lands in said county, including lands owned by the plaintiff, were and are valued in the year 1913 for the purposes of taxation at sums in excess of 53 per cent of the true and fair value thereof in money."

In their Second Amended Answer they deny this allegation (p. 82, Assignment VI).

(d) In their First Amended Answer they allege at paragraph XIV thereof the following:

> "Deny that said assessment for the year 1914 was made upon the basis of 83½ per cent *or upon any other or different basis than the true and fair value in money of the property assessed.*
>
> The italics are our own. R. p. 64.)

Whereas the Second Amended Answer contains the following:

"Deny that said assessment for the year 1913 was made upon the basis of 83½ per cent";

omitting the above clause here put in italics. Record p. 83.)

We respectfully submit that it was error upon the part of the trial court to allow this amendment of pleadings, after the close of the case, where such amendments wholly contradicted the express and solemn pleading of the defendants and the position which they had assumed throughout the trial upon challenge by the plaintiffs. That the case should be considered on the admissions of the defendants that they undertook to assess the timber lands at 100 per cent of their true value, while the law required them to assess at 50 per cent of this value.

XVI

But whatever the justice of the court's ruling as a matter of trial or practice, and as a matter of admission by pleading or election, the course pursued by the defendants in the trial, the shifts, evasions and changes of front connected with the testimony of the assessor and members of the Board of Equalization, is certainly strong and compelling evidence of the fraudulent design of these taxing officers against the non-resident and non-operating timber owners of Clallam County and in favor of their own home constituents.

The same matters hereinabove referred to were pleaded in all four cases in substantially the same form, answered in the same form by the defendants, the same amendments made after trial, and the same exceptions made and brought forward in the Assignments of Error in each case.

The course admittedly pursued by the Board of Equalization in perfunctorily O K-ing the assessment roll as made by the assessor, without any examination into the rate or manner in which he had made the assessment or at which the property was assessed, and without knowing how it was assessed, without the exercise of any independent judgment of their own as to the justice of it, demonstrates the fact that there has been no assessment of these properties for 1913 or 1914, as there was no exercise of honest or intelligent judgment by this *quasi* judicial body.

The functions of a Board of Equalization generally are thus set forth in 37 Cyc. 1091:

> "In reviewing an individual assessment, the Board of Equalization is bound neither by the valuation placed on the property by its owner, nor by that of the assessor, and it is not acting as an arbitrator between these two parties, but as an official body charged with the duty of ascertaining the true taxable value of the property; therefore it may make such changes in assessment as are necessary to carry its determination into effect";

citing a number of cases.

It is expressly held in this state that the action of the Board of Equalization is a necessary part of the assessment of valuations, and it must follow that until it has so acted there has been no assessment.

Hunt vs. Fawcett, 8 Wash. 399:

> "On that day the work of the State Board of Equalization was completed and then and not until then did the value of the property in the county for purposes of state and county taxation become fixed and certain."

In *State ex rel. Thompson vs. Nicholls,* 29 Wash. 157, it is held that the valuation of real property may be changed in the odd numbered years in spite of the statute providing for its assessment biennially in even numbered years (see p. 174).

Our statute is so express and definite in this matter that there is no room for argument. Remington & Ballinger's Code, Section 9200, defining the powers of the Board of Equalization:

> "They shall examine and compare returns of the assessment of the property of the county, and proceed to equalize the same, so that each tract or lot of real property and each article or class of personal property shall be entered on the assessment list at its true and fair value subject to the following rules:
>
> First. They shall raise the valuation of each tract or lot of real property which in their opinion is returned below its true and fair value to such price or sum as they believe to be the true and fair value thereof, after at least five days notice

shall have been given in writing to the owner or agent.

Second. They shall reduce the valuation of each tract or lot which in their opinion is returned above its true and fair value to such price or sum as they believe to be the true and fair value thereof.

Third. They shall raise the valuation of each class of personal property which in their opinion is returned below its true and fair value to such price or sum as they believe to be the true and fair value thereof," etc.

XVII.

It appears in this case that these plaintiffs had protested to the Board of Equalization in the years 1912, 1913 and 1914 against this illegal and fraudulent assessment, but without relief. However, under the statutes and practice in the State of Washington it is not necessary to appear before the Board of Equalization in order to demand relief of this kind in a court of equity.

Olympia Water Works vs. Thurston County, 14 Wash. 268.
Miller vs. Pierce County, 28 Wash. 110.
Whatcom County vs. Fairhaven Land Co., 7 Wash. 101.
Puget Realty Co. vs. King County, 50 Wash. 352.

XVIII.

COMPARISONS OF ACTUAL VALUES AND ASSESSED VALUES OF TOWN LOTS IN PORT ANGELES AND AGRICULTURAL LANDS IN THE EAST END OF THE COUNTY.

The evidence upon this branch of the case is very voluminous. Dealing as it does with a large number of town lots and going into the details of the physical and commercial relations and locations of these lots, it is impossible in a written brief to treat this subject in other than a general way, and to point out to the court where the evidence may be found in the record, in order to show, as we claim it does, that the property was assessed for taxation at from 10 to 25 per cent only of its value.

WILLIAM J. WARE, produced as a witness by the plaintiffs, says that he resides in Port Angeles, has been acquainted with the values of real property in Clallam County for many years; has been engaged in the real estate and insurance business. At the request of the plaintiffs he had gone over the values of the lots in the business section of Port Angeles and had taken a plat of the city and marked on it his valuations of the lots (p. 129), which is introduced in evidence as plaintiffs' Exhibit "C." Referring to this map he gives the valuations of the particular lots. This pro-

perty covers the entire central and business portion of Port Angeles (p. 140).

There was filed in connection with the testimony of the Witness Ware a tabulation of his valuations of said lots, set opposite the assessed valuations of said property for the years 1912 and 1914, as Exhibit "Q" (p. 142). The figures in red ink on said Exhibit "Q" showing the witness' estimate of the value, it being admitted by counsel on both sides, and the court, that such statements on the tabulation be taken as the actual showing of the assessor's books as to the assessed values, and that the tabulation shall stand as the testimony of the witness as to values; but on this Exhibit "Q" the column headed "Assessed Value for 1910" and the first column, "Valuation by Appraisal Committee," which are lined out in pencil, should be considered as stricken out as not competent (p. 142).

Ware's testimony covers pages 128 to 143 of the record.

THOMAS J. ALDWELL, called by the plaintiffs (p. 150) testifies that he has been a citizen of Port Angeles about twenty-five years; is engaged in the real estate and insurance business and is vice-president and general manager of the Olympic Power Company.

On April 29, 1914, the witness had written the plaintiffs' witness, Grasty, two letters (Exhibits F and

G) (Record pp. 155, 156) commenting on the disproportion between the real and assessed valuations of Port Angeles property and enclosing to Grasty a typewritten list of properties in the heart of the City of Port Angeles, which Aldwell and a number of the prominent business citizens of Port Angeles had made up and signed, as expressing their judgment of the value on February 1, 1914, of these lots. This table of values had been gotten up to satisfy would-be investors in local improvement bonds, of the value of central business property. Plaintiffs produced these letters and a photographic copy of the citizens committee tabulation of values (p. 156). They were identified by Aldwell as genuine (p. 151), were offered and received in evidence as plaintiffs' Exhibits E, F and G, (pp. 176, 177), the original of the photographic copy being lost and not being assessible to plaintiffs; the court, however, holding that Exhibit E, being the tabulation of values, was not binding as representing the signers to it, other than Aldwell. This letter of Aldwell's (Exhibit F) will be found printed in the record at page 775. Exhibit E, the tabulated statement, F and G, will be found in the original exhibits.

Aldwell endeavors to escape the effect of what, upon the witness stand he calls unjustifiedly higher values, that he had placed upon the property in this statement, with the explanation that this was an opti-

mistic view that he took of affairs at that time. Aldwell, however, being a citizen and property holder of Port Angeles and aligned in interest directly with the defendants, and clearly so from his demeanor upon the witness stand, was more likely correct and disinterested when he compiled this written statement of February, 1914, than now, when placed upon the stand and called upon to contradict and indict his fellow citizens of twenty-five years' standing. His attempted recantation and repudiation of his former solemn written statement is, we submit, significant proof of the plaintiff's claim that the taxing officers and citizens of Port Angeles were in league in this conspiracy.

The following is a table of the values given by Aldwell in this Exhibit "E," alongside of the valuations given on the same property by Ware, as shown in plaintiffs' Exhibit "Q," with the assessments of this property in 1912 and 1914:

Dist No. 1, Block 1, Tidelands, West of Laurel Street—

	Aldwell's Values	Assessed Valuation 1912	Ware's 1912 Valuation	Assessed Valuation 1914	Ware's Valua. 1914
Lot 1	$18,000	$2,100	$15,000	$6,500	$25,000
Lot 2	12,000	1,650	12,000	4,000	16,000
Lot 3	10,000	1,550	8,500	3,100	14,000
Lot 4	10,000	1,550	8,500	3,100	14,000
Lot 5	10,000	1,550	8,500	3,100	14,000
Lot 6	10,000	1,550	8,500	3,000	13,000
Lot 7	10,000	1,450	8,500	2,900	13,000

	Aldwell's Values	Assessed Valuation 1912	Ware's 1912 Valuation	Assessed Valuation 1914	Ware's Valua. 1914
Lot 8.....	10,000	1,450	8,000	2,900	12,500
Lot 9.....	10,000	3,590	8,000	7,400	12,500
Lot 10.....	12,500	3,590	11,000	7,400	18,000
	112,500	16,440	(96,500)	36,000	(152,000)
Block 1 East of Laurel Street—					
Lot 1.....	$12,500	$1,760	$12,000	$5,000	$18,000
Lot 2.....	10,000	1,250	7,000	3,500	13,000
Lot 3.....	10,000	1,250	7,500	3,100	14,000
Lot 4	10,000	1,250	8,000	3,100	15,000
Lot 5	10,000	1,250	8,000	3,100	15,000
Lot 6	10,000	1,250	8,000	3,100	16,000
Lot 7	10,000	1,250	9,000	3,100	17,000
Lot 8	12,500	1,500	10,000	4,000	18,000
Lot 9	18,000	2,100	15,000	6,500	25,000
	103,000	12,860	(84,500)	34,500	(151,000)
Block 2 East of Laurel Street—					
Lot 6.....	$ 2,500	$ 650	$5,000	$2,200	$ 8,000
Lot 7.....	3,000	750	6,000	2,300	10,000
Lot 8.....	4,000	850	8,000	3,000	12,000
Lot 9.....	7,500	1,730	12,000	4,000	18,000
	17,000	3,980	(31,000)	11,500	(48,000)
Block 14, Townsite of Port Angeles—					
Lot 1.....	$ 7,500	$1,000	$6,000	$2,000	$11,000
Lot 2.....	5,500	800	3,000	1,600	6,000
Lot 3.....	5,000	700	3,000	1,400	6,000
Lot 4.....	4,000	650	2,500	1,300	5,500
Lot 5.....	4,000	650	2,500	1,300	5,000
Lot 16.....	6,000	700	4,000	1,700	7,500
Lot 17.....	6,000	700	4,000	1,800	8,000
Lot 18.....	6,500	700	4,000	1,800	8,000
Lot 19.....	7,500	850	4,000	2,000	8,000

	Aldwell's Values	Assessed Valuation 1912	Ware's 1912 Valuation	Assessed Valuation 1914	Ware's Valua. 1914
Lot 20.....	10,000	1,000	8,000	2,600	15,000
	62,000	7,750	(41,000)	17,500	(80,000)
Block 15, Townsite of Port Angeles—					
Lot 1.....	$18,000	$1,800	$12,000	$4,500	$20,000
Lot 2.....	14,000	1,350	6,000	3,000	9,500
Lot 3.....	12,000	1,250	6,000	2,500	9,500
Lot 4.....	12,000	1,250	6,000	2,500	9,500
Lot 5.....	12,000	1,250	6,000	2,500	9,500
Lot 6.....	12,000	1,150	6,000	2,400	9,500
Lot 7.....	12,000	1,150	5,500	2,300	9,000
Lot 8.....	12,000	1,150	5,000	2,300	8,000
Lot 9.....	12,000	1,150	5,000	2,400	8,000
Lot 10.....	15,000	1,350	8,000	3,000	12,000
Lot 11.....	10,000	1,000	8,000	2,700	12,000
Lot 12.....	7,500	900	4,000	2,200	8,000
Lot 13.....	7,000	800	4,000	2,000	8,000
Lot 14.....	7,000	800	4,000	2,000	8,000
Lot 15.....	7,000	800	4,000	2,000	8,500
Lot 16.....	7,000	800	4,000	2,000	9,000
Lot 17.....	7,000	800	4,000	2,000	9,000
Lot 18.....	7,000	800	4,000	2,000	9,000
Lot 19.....	8,000	900	4,000	2,500	9,000
Lot 20.....	12,000	1,000	16,000	3,500	17,500
	210,500	21,450	(121,500)	50,300	(202,500)
Lot 16, R. S. Smith's Subd.—					
Lot 1.....	$ 6,500	$1,150	$3,500	$3,000	$ 8,500
Lot 2.....	5,000	1,000	4,000	2,500	8,000
Lot 3.....	6,500	1,100	4,000	2,500	8,500
Lot 4.....	7,500	.....	.....	.....	9,000
Lot 5.....	8,500	3,395	5,000	.....	9,500
Lot 6.....	9,000	.....	5,000	.....	9,500
Lot 7.....	12,000	1,250	5,000	2,500	9,500
Lot 8.....	12,000	1,350	5,000	3,000	9,500

	Aldwell's Values	Assessed Valuation 1912	Ware's 1912 Valuation	Assessed Valuation 1914	Ware's Valua. 1914
Lot 9.....	18,000	1,800	12,000	4,500	20,000
Lot 10.....	18,000	1,000	10,000	3,500	17,500
Lot 11.....	8,000	850	5,000	2,500	9,000
Lot 12.....	7,000	700	4,500	2,000	8,500
Lot 13.....	7,000	700	4,000	2,000	8,000
Lot 14.....	7,000	700	4,000	2,000	7,500
Lot 15.....	7,000	650	4,000	2,000	7,500
Lot 16.....	7,000	650	3,500	2,000	6,500
Lot 17.....	7,000	650	3,500	2,000	6,500
Lot 18.....	9,000	750	4,000	2,500	7,000
	162,000	17,695	(90,500)	46,110	(170,000)

Block 17, N. R. Smith's Subd.—

Lot 8.....$	1,200	$ 400	$1,500	$1,000	$ 3,000
Lot 9.....	5,000	800	2,500	2,000	5,000
Lot 10.....	6,000	600	3,000	2,000	6,000
Lot 11.....	4,500	500	2,500	1,000	5,000
	16,700	2,300	(9,500)	6,000	(19,000)

Block 32 Townsite Port Angeles—

Lot 2.....$	4,500	Not listed		$1,400	$ 4,500
Lot 3.....	4,500	"	"	1,400	4,500
Lot 4.....	4,500	"	"	1,400	4,500
Lot 5.....	4,500	"	"	1,400	4,500
	18,000			5,600	(18,000)

Block 31, N. R. Smith's—

Lot 1.....$	7,500	$ 800	$4,000	$2,000	$ 7,500
Lot 2.....	6,000	700	3,000	1,500	6,000
Lot 3.....	6,000	650	3,000	1,500	6,000
Lot 4.....	6,000	650	3,000	1,500	6,000
Lot 5.....	6,000	650	3,000	1,500	6,000
Lot 6.....	6,000	650	3,000	1,500	6,000
Lot 7.....	6,000	650	3,000	1,500	6,000

	Aldwell's Values	Assessed Valuation 1912	Ware's Valuation 1912	Assessed Valuation 1914	Ware's Valua. 1914
Lot 8.....	6,000	650	3,000	1,500	6,000
Lot 9.....	7,500	800	4,000	2,000	8,000
	57,000	6,200	(29,000)	14,500	(57,500)
Block 30, N. R. Smith's—					
Lot 8.....$	3,000	$ 300	$1,750	$1,000	$ 3,500
Lot 9.....	3,000	300	3,000	1,500	5,000
	6,000	600	(4,750)	2,500	(8,500)
Block 17, Thompson & Goodwin's—					
Lot 1.....$	1,500	$ 400	$2,000	$ 800	$ 4,000
Lot 2.....	1,200	300	1,500	600	3,000
Lot 3.....	1,200	300	1,300	600	2,500
Lot 4.....	1,200	300	1,300	600	2,500
Lot 5.....	1,200	300	1,300	600	2,500
Lot 6.....	1,200	300	1,500	700	3,000
N. R. Smith's—					
Lot 7.....$	1,200	$ 300	$1,250	$ 800	$ 3,000
Lot 12.....	3,500	400	2,000	800	4,000
Thompson & Goodwin's—					
Lot 13.....	$3,500	$300	$1,750	$600	$3,500
Lot 14.....	3,500	300	1,500	600	3,000
Lot 15.....	3,500	300	1,500	600	3,000
Lot 16.....	4,000	300	1,300	600	2,500
Lot 17.....	4,000	300	1,300	600	2,500
Lot 18.....	4,000	350	1,750	700	3,500
	34,700	4,450	(21,250)	9,200	(42,500)
Block 18, Stratton's—					
Lot 1.....$	5,000	$ 500	$2,500	$ 800	$ 5,000
Lot 2.....	3,500	400	2,000	600	4,000
Lot 3.....	3,500	400	1,300	600	2,500
Lot 4.....	3,500	400	1,300	600	2,500

N. R. Smith's—

	Aldwell's Values	Assessed Valuation 1912	Ware's Valuation 1912	Assessed Valuation 1914	Ware's Valua. 1914
Lot 6	$ 3,500	$ 400	$1,000	$ 600	$ 2,000
Lot 7	3,500	400	1,000	600	2,000
Lot 8	3,500	400	1,000	600	2,000
Lot 9	3,500	450	1,500	800	3,000
Lot 10	3,500	350	2,000	700	3,500
Lot 11	3,500	300	2,000	600	3,000
Lot 12	3,500	300	1,700	600	2,500
Lot 13	3,500	300	1,700	600	2,500
Stratton's—					
Lot 15	$ 3,500	$ 300	$1,300	$ 600	$ 2,500
Lot 16	3,500	300	1,300	600	2,500
Lot 17	3,500	350	1,500	600	3,000
Lot 18	4,500	400	1,750	800	3,500
	58,500	5,900	(24,850)	10,300	(46,000)
Block 19, N. R. Smith's—					
Lot 1	$ 3,500	$ 400	$1,150	$ 600	$ 2,500
Lot 2	2,500	350	1,000	550	2,000
Lot 3	2,500	350	1,000	550	2,000
Lot 4	2,500	350	1,000	550	2,000
Lot 5	2,500	350	1,000	550	2,000
Lot 6	2,500	350	1,000	550	2,000
Strattons—					
Lot 8	$ 3,500	$ 400	$1,500	$ 600	$ 3,000
Lot 9	4,500	500	2,000	800	4,000
Lot 10	4,500	400	1,750	800	3,500
Lot 11	3,500	350	1,500	600	3,000
N. R. Smith's—					
Lot 13	$ 3,000	$ 250	$1,250	$ 500	$ 2,500
Lot 14	3,000	250	1,250	480	2,500
Lot 15	3,000	250	1,250	460	2,500
Lot 16	3,000	250	1,250	460	2,500

	Aldwell's Values	Assessed Valuation 1912	Ware's 1912 Valuation	Assessed Valuation 1914	Ware's Valua. 1914
Lot 17.....	3,000	250	1,250	460	2,500
Lot 18.....	3,500	300	1,500	500	3,000
	50,500	5,350	(20,650)	9,010	(41,250)

Block 20, N. R. Smith's—

Lot 1.....	$ 3,500	$ 350	$1,000	$ 500	$ 2,000
Lot 2.....	2,500	300	900	450	1,750
Lot 3.....	2,500	300	900	450	1,750
Lot 4.....	2,500	300	900	450	1,750
Lot 5.....	3,000	300	900	450	1,750
Lot 6.....	3,000	300	900	500	1,750
Lot 7.....	3,000	300	900	500	1,750
Lot 8.....	3,000	350	900	500	1,750
Lot 9.....	3,000	400	1,000	550	2,000
Lot 10.....	4,000	300	1,200	450	2,500
Lot 11.....	3,000	250	1,000	400	2,000
Lot 12.....	2,500	250	1,000	400	2,000
Lot 13.....	2,500	250	1,000	400	2,000
Lot 14.....	2,500	250	1,000	400	2,000
Lot 15.....	2,500	250	1,000	400	2,000
Lot 16.....	2,500	250	1,000	400	2,000
Lot 17.....	2,500	250	1,000	400	2,000
Lot 18.....	3,500	300	1,200	450	2,500
	51,500	5,250	(17,700)	8,050	(35,250)

Block 30, Thompson & Goodwin's—

Lot 1.....	$ 4,000	$ 350	$1,750	$ 700	$ 3,500
Lot 2.....	4,000	300	1,300	600	2,500
Lot 3.....	4,000	300	1,300	600	2,500
Lot 4.....	3,500	300	1,500	600	3,000
Lot 5.....	3,500	300	1,300	600	2,500
Lot 6.....	3,500	300	1,300	600	2,500
Lot 7.....	3,500	300	1,500	800	3,000
	26,000	2,150	(9,950)	4,500	(19,500)

Block 29, Stratton's—

	Aldwell's Values	Assessed Valuation 1912	Ware's Valuation 1912	Assessed Valuation 1914	Ware's Valua. 1914
Lot 1	$ 4,500	$ 400	$1,750	$ 800	$ 3,500
Lot 2	3,500	350	1,500	600	3,000
Lot 3	3,500	300	1,300	600	2,500
Lot 4	3,500	300	1,300	600	2,500
N. R. Smith's					
Lot 6	$ 3,500	$ 300	$1,250	$ 600	$ 2,500
Lot 7	3,500	300	1,250	600	2,500
Lot 8	3,500	300	1,500	600	3,000
Lot 9	4,000	350	2,000	700	3,500
	29,500	2,600	(11,850)	5,100	(23,000)

Block 28, N. R. Smith's—

Lot 8	$ 3,500	$ 350	$1,500	$ 600	$ 3,000
Lot 9	4,500	400	2,000	800	3,500
	8,000	750	3,500	1,400	(6,500)

Block 27, N. R. Smith's—

Lot 1	$ 4,000	$ 300	$1,100	$ 450	$ 2,500
Lot 2	3,000	250	800	400	2,000
Lot 3	2,500	250	800	400	2,000
Lot 4	2,500	250	800	400	2,000
Lot 5	2,500	250	800	400	2,000
Lot 6	2,500	250	800	400	2,000
Lot 7	2,500	250	800	400	2,000
Lot 8	2,500	250	800	400	2,000
	22,000	2,050	(6,700)	3,250	(16,500)

Dist. No. 4, Block 30, N. R. Smith's—

Lot 10	$ 2,500	$ 150	$ 600	$ 500	$ 1,500
Lot 11	1,500	50	400	300	1,000
Lot 12	600	50	350	200	900

Thompson & Goodwin's—

	Aldwell's Values	Assessed Valuation 1912	Ware's Valuation 1912	Assessed Valuation 1914	Ware's Valua. 1914
Lot 13	$ 600	$ 60	$ 400	$ 150	$ 850
Lot 14	500	80	400	120	850
	5,700	390	(2,150)	1,270	(5,100)

Block 31, N. R. Smith's—

Lot 14	$2,000	$300	$750	$450	$1,500
Lot 15	3,000	300	750	450	1,500
Lot 16	3,000	300	750	450	1,500
Lot 17	3,000	300	750	450	1,500
Lot 18	4,000	300	1,000	600	2,000
	15,000	1,500	(4,000)	2,400	(8,000)

Block 54, Townsite Port Angeles—

Lot 1	$ 2,500	Not listed		$ 550	$ 2,000
Lot 2	2,000			400	1,500
Lot 3	2,000			400	1,500
Lot 4	2,000			400	1,500
Lot 5	2,000			400	1,500
Lot 12	1,000			350	900
Lot 13	1,000			350	900
Lot 14	1,000			350	900
Lot 15	1,000			350	900
Lot 16	1,000			350	900
Lot 17	1,000			300	900
Lot 18	1,000			300	900
	17,500			4,500	(14,300)

Block 69, Townsite—

Lot 1	$ 1,500	Not listed		$ 350	$ 900
Lot 5	1,500			350	900
Lot 6	1,500			350	900
Lot 7	1,500			350	900

	Aldwell's Values	Assessed Valuation 1912	Ware's Valuation 1912	Assessed Valuation 1914	Ware's Valua. 1914
Lot 8.....	1,500			350	900
Lot 9.....	2,000			400	900
	9,500			2,150	(5,400)

The defendants called as expert witnesses upon city property the following:

C. L. HAGGITH, who tabulates his values in Defendants' Exhibit 37 (p. 611). He admits on examination that this covers property that is not and never has been commercially valuable, is largely under tidewater and was selected for him by the defendants' attorneys.

LEWIS LEVY (p. 587), who should never be separated from his letter to Grasty (Plaintiffs' Exhibit "N," page 772), and who after placing a valuation of $10,000 on his former Lot 1, Block 15, in his valuation evidence, admitted that he sold it for $25,000 and that it earned a handsome rental return on that valuation (p. 596).

LAURIDSEN (p. 414), formerly a county commissioner and a beneficiary through his bank by the system of low assessments, whose tabulation was admittedly largely "wild cat" property.

C. C. HENRY (p. 598), another large owner of "wild cat" property, or outlying property purchased on certificates of delinquency, and whose tabulation lists covered a district that he had never handled in

any way and as to which he was thoroughly disqualified.

With reference to values of city property in Port Angeles a great effort was made by the defendants to prove that an abnormal boom condition existed in Port Angeles, beginning in the late fall of 1912 and early part of 1913, and hence that values put on Port Angeles property by the plaintiffs' witness Ware were from a temporary viewpoint. But the pronounced increase in the value of Port Angeles property between 1912 and 1914, as shown by Ware's testimony, is remarkably verified by the defendants' evidence under this head. The Defendants' Exhibit 38 shows that Hallahan, the assessor, increased the assessed valuation of Port Angeles real estate in 1914 over the preceding assessment, about 70 per cent. Plaintiffs' Exhibit "Q" shows that business property of Port Angeles was considered by the assessor in a great many instances to have doubled or trebled in 1914; at least the assessor doubled or trebled the assessment. Hallahan, the assessor, is the one witness with whom the defendants must stand or fall. If he was right in his assessment as shown by Defendants' Exhibit 38, and Plaintiffs' Exhibit "Q," then Ware is right, for his values are remarkably consistent with and verified by the exhibits referred to. And if Ware is wrong and these values did not increase in 1914 over 1912, then the reason for the

assessor's increase of their assessment must have been to escape the disclosures which would follow the first suits brought by the plaintiffs in May, 1914.

Now, with respect to agricultural lands. Ware testified for the plaintiffs and submitted a tabulation of his values of these lands, shown as Exhibit "R" (p. 142). (The figures in red ink on original exhibit). That four sections of Sequim were worth in 1914 from $200 to as high as $400 per acre, and the same exhibits show that these lands were assessed on an average of $50 per acre. The lands in the Dungeness valley would run about the same.

This testimony was corroborated by the hostile witnesses, Adams (testimony commencing on page 698) and Garlick (testimony commencing on page 773). Adams testified (pp. 703 to 705, etc.) that his own farm, 30 acres renting for $600 per year, was a fair sample of the prairie lands worth about $200 per acre. He said (p. 703):

> "There is not a bit of difference in any of this land that is being irrigated around here."

The Dungeness land he considered as better yet (p. 718) and the farmers were making good returns from it at the present valuation.

Both Adams and Garlick very reluctantly testified relative to the popular pressure brought on the taxing

officers to raise the timber assessments (pp. 721, 724 to 737).

Opposing this evidence is that of the defendants' one witness, J. L. Keeler, whose testimony we contend is completely discredited and himself impeached by his written statements on the back of Plaintiffs' Exhibits U and V (pp. 559, 561). His code of business morals is indicated (pp. 564,565) by his testimony that he would be more likely to tell the truth to a purchaser from his own neighborhood. As to others he said: "I might tell them the truth and I might lie to them."

The properties in Sequim prairie and Port Angeles have been selected and treated as typical of real properties in all parts of the county. It is obviously impossible to cover all sections, but the property selected, together with the cases of the banks, mills, the Olympic Power Company, etc., show the discrimination designed and accomplished against the owners of timber lands, this class of property constituting the greater bulk of the assessable valuation of the county and practically all owned by non-residents.

XIX.

By the overwhelming weight of the evidence it was demonstrated that hemlock on the interior timber lands had no appreciable market value whatever, be-

cause it cannot be rafted; it is too heavy to float; it is not of sufficient value to ship on barges, and would not pay at the present time to cut it on the interior and ship it in lumber.

We cite the testimony of defendants' expert timber witnesses as follows:

Chisholm, general manager for Merrill & Ring (p. 326):

> "I should not call hemlock of any particular value down there."

Newbury (p. 333), thinks hemlock of no value whatever except as it could be used in logging operations.

McGuire (p. 345), considers the hemlock that he saw of very little value, either of the interior or the Straits timber.

Wanamaker (p. 358). Witness put no value upon hemlock either in 1912 or 1914. This is true of both the lands of the interior and those of the Straits.

R. D. Merrill (p. 384), says that hemlock, if one has to tow it to market, is not worth much, but may be utilized if you have a railroad and saw it on the ground; says it could be carried on a barge to some railroad terminal, but not economically.

Alex. Polson (p. 308), would not consider hem-

lock of much value because it sinks when put in the water. It would have some value if milled on the ground, 10, 15 or 20 cents per thousand.

This was the unbroken line of testimony of defendants' witnesses as to the value of hemlock, except the testimony of Mr. Frost, counsel for defendants (p. 402 to 409) but it is apparent that the market conditions of hemlock with which Mr. Frost had to deal were exceptional and would not apply to hemlock in Clallam County.

PLAINTIFFS' WITNESSES.

Eugene France (p. 113), says that hemlock has no value and had no value in March, 1913; has not considered it worth logging.

Graham (p. 127), says that hemlock in Clallam County in March, 1912, was perhaps worth 40 cents per thousand; that hemlock at that time had no value; timber buyers are not paying anything for hemlock.

John Rea (p. 122), would say that hemlock was of no value at all; worth perhaps 30 or 40 cents a thousand, and in the interior many buyers were not paying anything for it.

Bordeaux (p. 119), values hemlock at 50 cents

per thousand on the interior and 50 to 75 cents in the straits zone.

Duvall (p. 125), has never known of hemlock ties having any commercial value. They would only be of value to a person constructing a logging road. Hemlock about the Pysht and Hoko Rivers would be worth about 75 cents per thousand (straits zone). Hemlock on the interior timber lands would not exceed 50 cents per thousand.

The following is a tabulation taken from exhibits attached to the Bill of Complaint in each case, the correctness of which is admitted by the defendants, showing the amount of hemlock, the assessed value and the tax figures on an average tax levy of 33 mills:

CLALLAM LUMBER CO.

In 1913 (Cause No. 2905).

Hemlock—	Assessed Valuation	
704,065½ M.	$223,222.98	
359,504 poles at 10c	35,950.40	
610,359 ties at 2c..	12,207.18	1913 tax on
	$271,380.56	Hemlock $8,955.56

In 1914 (Cause No. 2907—

Hemlock—	Assessed Valuation	
704,065½ M.	$233,970.79	
359,504 poles at 10c	35,950.40	
610,359 ties at 2c..	12,207.18	1914 tax on
	$282,128.37	Hemlock $7,335.34

RUDDOCK & McCARTHY.

In 1913 (Cause No. 2906)—

Hemlock—	Assessed Valuation		
76,212¾ M. at 35c..	$ 26,674.47		
25,315 poles at 10c	2,531.50		
66,072 ties at 2c.....	1,321.44	1913 tax on	
	$ 30,527.41	Hemlock	$1,007.81

In 1914 (Cause No. 2908)—

76,212¾ M. at 40c..	$ 30,485.10		
25,315 poles at 10c..	2,531.50		
66,072 ties at 2c....	1,321.44	1914 tax on	
	$ 34,338.04	Hemlock	$ 892.79

Therefore, whatever disposition the court makes of this case upon other grounds, the tax upon the plaintiffs' lands involved in this suit should be diminished by the following amounts, on account of the assessment of hemlock, predicated upon values which did not exist:

Clallam Lumber Company in Cause No. 2905, tax for 1913	$8,955.56
Clallam Lumber Company in Cause No. 2907, tax for 1914	7,335.34
Ruddock & McCarthy in Cause No. 2906, tax for 1913	1,007.81
Ruddock & McCarthy in Cause No. 2,908, tax for 1914	892.79

That the court could administer this relief to the plaintiffs irrespective of the plaintiffs maintaining their

claim of actual fraud, as to hemlock or other classes of timber, we cite the following authorities:

Simkins A. Federal Equity Suit, p. 27:

"When jurisdiction is taken upon an alleged equity which ceases before the suit ends, or is disputed by evidence on the trial of the case, the court will administer the legal remedy. However, this rule is dependent upon the utmost good faith in setting up the equitable facts through which jurisdiction is sought. If it should appear that the complainant had no reasonable ground upon which to base the equity, the court should dismiss the bill.

In *Clarke vs. Wooster,* 119 U. S. 325, it is said that if the case was one for equitable relief the mere fact that the ground for such relief had expired, etc., would not take away jurisdiction and preclude the court from granting relief.

Union Life Ins. Co. vs. Phillips, 102 Fed. 24.
Shanewall vs. Lewis, 69 Fed. 487 (bottom of p. 491):

"For it is a well settled maxim of equity jurisprudence that where a court of equity obtains a jurisdiction for one purpose it will retain it for all purposes and render complete justice, even though, in doing so, it is necessary to establish purely legal rights and grant legal remedies which would otherwise be beyond the scope of its authority. The fact that the action is cognizable by a court of law does not, as a general rule, impair or divest the right of the court of equity having once obtained jurisdiction, to entertain the suit."

Puget Realty Co. vs. King County, 50 Wash. 349, 352:

"It is clear that but for the assessor's error,

> appellant's property would have been assessed some $13,000 less than it was assessed, had the assessor correctly understood the conditions. This was a mistake, honestly made, it is true, but its effect upon the appellant is just the same as it would have been had it been made dishonestly and with the purpose of defrauding him. Why, then, should it not have the same relief? We think it should."

To the same point, *Case vs. San Juan County,* 59 Wash. 222. Here the court says:

> "Such a discrepancy between the actual and assessed value shows a constructive fraud."

See also *Metropolitan Building Co. vs. King County,* 63 Wash. 409, 412.

Savage vs. Pierce County, 68 Wash. 623.

This was a case of over-valuation only.

Spokane & Eastern Trust Co. vs. Spokane, 70 Wash. 48, 52.

This point was urged upon the trial court particularly in the plaintiffs' Petition to Rehear (Cause No. 2905, p. 831), but refused by the trial court upon the ground that it was "only a question of over-valuation and in any event, it is not so palpably excessive as to warrant a finding of fraud." (p. 833).

We respectfully submit that under the above authorities the court was wrong in the law, and certainly wrong in the facts where the over-valuation con-

sisted in taxing property in the one case (No. 2905) at a valuation of over $270,000, and in the case involving the least amount, at over $30,000, when in fact the property had no assessable value whatsoever.

XX.

ASSIGNMENTS OF ERROR 1 TO IV.

Assignment No. I.

At page 178 of the Record it appears that Thomas T. Aldwell, the general manager of the Olympic Power Company, in depreciating on the witness stand the value which he had given of the power plant to the Public Service Commission, stated that the dam in the river had gone out, inferring that it would affect the market value of the plant. He was then asked by defendants' counsel as follows:

> "Q. Do you know what the general impression in Port Angeles was concerning your dam at that time?"

Objection as to the competency of this was made by the plaintiffs and overruled by the court, to which the witness answered substantially that he was told he could never make the dam stick.

The ruling was clearly error as letting in street talk to affect market value.

This is set out in Assignment No. I (Record 2905, p. 837).

Assignment No. II, page 838.

This same witness, Aldwell (Record p. 181) was shown a list of properties of Port Angeles and asked by defendants' counsel the following:

> "Q. Do I understand you to say that you were willing to sell this at double the assessed value?
> A. Yes, sir.
> MR. PETERS: That would not be competent.
> THE COURT: Objection overruled.
> MR. PETERS: Note an exception.
> THE COURT: Exception allowed."

The witness answered that he would not have been willing to accept double the assessed value of this property on the first day of March, 1913. He was then in an optimistic frame of mind; he does not know whether he would have done so on March 1, 1914, but he would now.

This was clearly error, as set up in Assignment No. II.

The witness Lauridsen, called by the defendants (Record p. 415) produced a list of town lots in Port Angeles which he said he owned, and opposite them what he claimed to be the assessed value taken from his tax receipts, which he offered in evidence and which was accepted in evidence as Defendants' Exhibit 29, and was questioned thus by defendants' counsel:

"Q. I wish you to indicate to the court on what part of the memorandum or tabulation are the 600 lots which you would sell for their assessed value.

MR. PETERS: I do not think that is competent, what the witness will sell the property for at this time.

MR. EWING: I will limit the time to the first of March, 1914.

MR. PETERS: That is not it. What was the market value, not what he might or might not sell it for.

THE COURT: It is a declaration against interest; I will overrule the objection.

MR. PETERS: Note an exception.

THE COURT: Exception allowed."

This exhibit was admitted over plaintiffs' objection.

This was clearly error. If Aldwell or Lauridsen had been called by the plaintiffs and testified to the value of certain lots they might properly have been asked by the defendants on cross-examination whether they had not at some previous time stated that they would sell these lots for a different price to that which they then stated as impeachment. But certainly as defendants' own witnesses they cannot testify in chief as to what they would sell lots for in September, 1915, as tending to show the market value in 1913 and 1914.

This error is set out in Assignment No. III (p. 838).

While we realize, of course, that these errors could not themselves alone materially change the result

of the case, yet they should be taken into consideration in estimating the value of these witnesses' testimony, and they throw some light upon the erroneous view of the trial court in passing upon the case.

XXI.

The law found in Section 9112 of Volume III of Remington & Ballinger's Codes and Statutes of Washington, providing for the assessment of property at 50 per cent of its true and fair value in money, is a valid law and was in force from and after the 12th day of June, 1913, and applicable to the assessments both for the year 1913 and 1914.

The contrary of this was asserted by the defendants in their answer (Record 2905, p. 78). We will therefore cite the following in support of our contention:

In *Spokane & Eastern Trust Co. vs. Spokane Co.*, 70 Wash. 49, the State Court recognized the validity of the practice of counties in assessing property at less than its actual value and in that case, at sixty per cent of its value, so long as the same rule was applied uniformly to all property.

Likewise in the case of *Savage vs. Pierce Co.*, 68 Wash. 623.

As these cases were both tried before the passage of the above act they of course had no reference to

the act, but if the practice without the statute was not a violation of the State Constitution, as there held, certainly the statute enacting such practice would not be unconstitutional.

See likewise on the subject generally the following:

City of Chicago vs. Fishburn, 189 Ill. 367, 377, 378.
Railroad & Telephone Co. vs. Board of Supervisors, 85 Fed. 302, 315, 316.
Taylor vs. L. & N. R. Co., 88 Fed. 350, 364.
State vs. Birmingham So. Ry. Co., 132 Ala. 475, 481, 483.

In the above Alabama case the same question was raised as is suggested here. The Alabama Constitution provides that "all taxes levied on property in this state shall be assessed in exact proportion to the value of such property." The Alabama Legislature of 1911 passed an act as follows:

> "Taxable property within this state shall be assessed, for the purposes of taxation, at sixty per cent of its fair and reasonable cash value."

It was held by the Supreme Court of Alabama to be perfectly clear that nothing expressed or implied in the language of the constitutional limitation prohibited the Legislature from fixing as a basis for taxation any percentage of the actual value of property whether greater or less than 100 per cent thereof, provided only that such rule be applied without dis-

crimination to all property of the same nature and the Court there says:

> "Similar legislation under similar provisions of the constitutions of Tennessee, Nebraska and West Virginia have been held to be valid. * * *" We believe that no court has ever taken a contrary view."

This law providing for the assessment of property at fifty per cent of its market value was passed by the Legislature of 1913 (Laws of Washington, 1913, p. 438, Chapter 140). The Legislature adjourned March 13, 1913. (See certificate of secretary, same volume, page 700). Under the State Constitution, Article II, Section 31, it is provided that all laws except appropriation bills shall take effect ninety days after adjournment of the session at which the law was enacted, except where an emergency clause is attached.

This statute then became effective June 13, 1913. As pointed out previously herein the Board of Equalization to pass upon the assessment roll of 1912 and 1913 did not meet until August, 1913. The law therefore was effective at that time and imposed upon the Board of Equalization the duty of seeing that property was assessed in this manner.

Hunt vs. Fawcett, 8 Wash. 399.

> "On that day the work of the State Board of Equalization was completed and then and not

until then did the value of property in the county for purposes of state and county taxation become fixed and certain."

In *State ex rel Thompson vs. Nichols,* 29 Wash. 157, it is held that the valuation of real property may be changed in the odd numbered years in spite of the statute providing for its assessment bienially in even numbered years. (See page 174).

Also see further authorities cited in this brief under Section XVI.

It is clear that under the Washington statute the actions of the Board of Equalization are just as much a part of the assessment of taxes as the act of the assessor in listing the lands and when the law of 1913 required properties to be assessed at fifty per cent of their value, without excluding the taxes for that year, it was certainly a direction to the assessors in the following June to follow this law. As a matter of fact the act was passed in March, 1913, though not in effect until June, but the assessor himself had plenty of notice of it before making up his tentative valuations.

XXII.

The defendants have affirmatively plead that the plaintiffs are charged with laches (Record 2905, p. 77) because it is claimed that plaintiffs paid all of the taxes levied on their lands for the years 1910, 1911

and 1912. But the plaintiffs were not aware of the fraud practiced upon them until after the payment by them of the taxes of 1912 (Record p. 691).

It is indispensable to the application of the doctrine of equitable estoppel that the parties sought to be estopped have knowledge of the truth of the material facts.

16 Cyc. 730.
11 Amer. & Eng. Enc. of Law, 433.
Marine Iron Works vs. Wiese, 148 Fed. 145, 157.
Puterbaugh vs. Wadham (Cal.), 123 Pac. 804, 807.
Fletcher vs. Kidd (Cal), 127 Pac. 71.
Globe Navigation Co. vs. Maryland Casualty Co., 39 Wash. 299, 307.
Bardsley vs. Sternberg, 17 Wash. 243, 247.

Pence vs. Langdon, 99 U. S. 578. This was a suit for rescission and recovery of purchase price of mining shares in which the defendant claimed plaintiff had knowledge of defendant's fraud. The court defines acquiescence thus:

> "Acquiescence and waiver are always questions of fact. There can be neither without knowledge. The terms import this foundation for such action. One cannot waive or acquiesce in a wrong while ignorant that it has been committed. Current suspicion and rumor are not enough. There must be knowledge of facts which will enable the party to take effectual action. Nothing short of this will do."

Brant vs. Virginia etc. Co., 93 U. S. 326, 335.

For the application of the doctrine of equitable estoppel, "There must generally be some intended deception in the conduct or declaration of the party to be estopped, or such gross negligence on his part as to amount to constructive fraud by which another has been misled to his injury."

It is essential as an element of equitable estoppel that the person invoking it has been influenced and misled to his injury by, and relied upon the representations or conduct of the persons sought to be estopped.

16 Cyc. 734.
11 Amer. & Eng. Encyc. of Law 436.
Atwood vs. Smith, 64 Wash. 470, 479.
Madson vs. Spokane, 40 Wash. 414, 417.
Mace vs. Duffy, 39 Wash. 597.
Shoufe vs. Griffiths, 4 Wash. 161. 166.
Thompson vs. S. F. National Bank, 160 U. S. 231, 244.

XXIII.

To summarize the relief that we urge should be granted the plaintiffs in this case we respectfully urge the following:

First: The assessments for the years 1913 and 1914 as against the plaintiffs were both based upon actual fraud, or if not, then upon such arbitrary method and unequal assessment as to constitute constructive fraud. In either case the assessment and consequent taxation of these lands was wholly void.

The question would then be raised as to what taxes the plaintiffs ought to pay:

We contend that the market value, or true value in money, of all the interior lands on March 1, 1913, and March 1, 1914, did not exceed the sum of $1.00 per thousand for fir, spruce and cedar; that we should not have been assessed at over 50 per cent of this sum, both as a matter of positive statute and as a matter of the declared practice of Clallam County assessors with other property.

Turning to Exhibit G attached to the Bill of Complaint in Cause No. 2907, page 28, it will be seen that the total amount of timber of all kinds assessed against the plaintiff Clallam Lumber Company was 2,551,080,000 feet. From the same exhibit (pages 46, 47 and 48) we aggregate the hemlock as 704,065,500 feet. Deducting this from the above total gives for fir, spruce and cedar on the lands of the Clallam Lumber Company 1,847,014,500 feet. Assessing this at 50 cents per thousand gives an assessed value of $923,507.25 for fir, spruce and cedar.

While confidently urging that the hemlock, for the reasons hereinbefore set out, should not be assessed at all, yet assuming it to have a market value of even 50 cents a thousand, and assessing it at one-half this, 25 cents a thousand, we should have the assessable

value of all hemlock timber of this plaintiff, $176,016.25.

Adding this to the above assessed valuation of fir, spruce and cedar, we have the total assessment of the two classes of timber at $1,099,523.50.

Adding to this the total of hemlock poles and hemlock ties (Exhibit G, page 48, Cause 2907) assessed at 10 cents and 2 cents apiece respectively (Cause 2907, p. 11), $48,157.58, we have for the Clallam Lumber Company's timber of all kinds, including hemlock poles and ties, an assessable value of $1,147,681.08.

This property was actually assessed for the year 1913 at $1,711,505 (Record 2905, p. 12), and for the year 1914 it was assessed at $1,725,015 (Record 2907, p. 12).

Pursuing the same discussion as to the Ruddock and McCarthy lands, in Causes 2906 and 2908, we have the following (Record 2908, p. 29). Exhibit B shows the total amount of all classes of timber as 714,929,750 feet. Deducting from this total the amount of hemlock, 76,212,750 feet, leaves 638,717,000 feet of fir, spruce and cedar. Estimating this at $1.00 per thousand for the market value, or 50 cents a thousand assessable value, gives $319,358.50.

Taking the hemlock at 50 cents market value, or 25 cents assessable value, per thousand upon the above

run, we have $19,053, or a total of $338,411.50.

Taking the total of hemlock poles at 10 cents and ties at 2 cents each, on these lands, gives an assessment for ties and poles of $3,852.94, or a total assessment for the Ruddock and McCarthy lands of $342,264.46.

These properties were assessed for the year 1913 at $479.990 (Record 2906, p. 8), and for the year 1914 at $561,395 (Record 2908, p. 6).

In obtaining the data for these estimates we have referred to Cause 2907, rather than 2905, and to Cause 2908, rather than 2906, because as stated in the Record there were inaccuracies of computation in the original bills which were corrected in the amended bills, and these corrections carried forward in the subsequent cases which in effect adopted the text of the amended bills.

It is evident that as our tenders were based upon a much higher estimate, in order to be safe, we have offered to do ample equity in that matter.

Second: Should this Court refuse to grant the remedy above outlined, but should exclude hemlock from assessment, such relief can be readily framed from the data above given.

Third: But should this Court refuse the above, but conclude that we are entitled at all events to an assessment of no higher a rate in 1914 than 1913, then the assessment upon the Clallam Lumber Company's lands in the year 1914 (Cause 2907) should be reduced by the sum of $194,774.20; and the assessment of the Ruddock and McCarthy lands for the year 1914 (Cause 2908) should be reduced by the sum of $81,405. (See discussion under point XI in brief, pages 163 et seq.)

We take it that the practical method of working out this relief in this Court would be, substantially, decrees adjudging that the assessments as made and the taxes as levied were void, and that the lands should be assessed by Clallam County in the manner and figures hereinabove pointed out, and that the taxes should so be extended upon the rolls, crediting the plaintiffs with the amounts which they have paid, in the one case, and which they have tendered and are to pay in the other.

Respectfully submitted,

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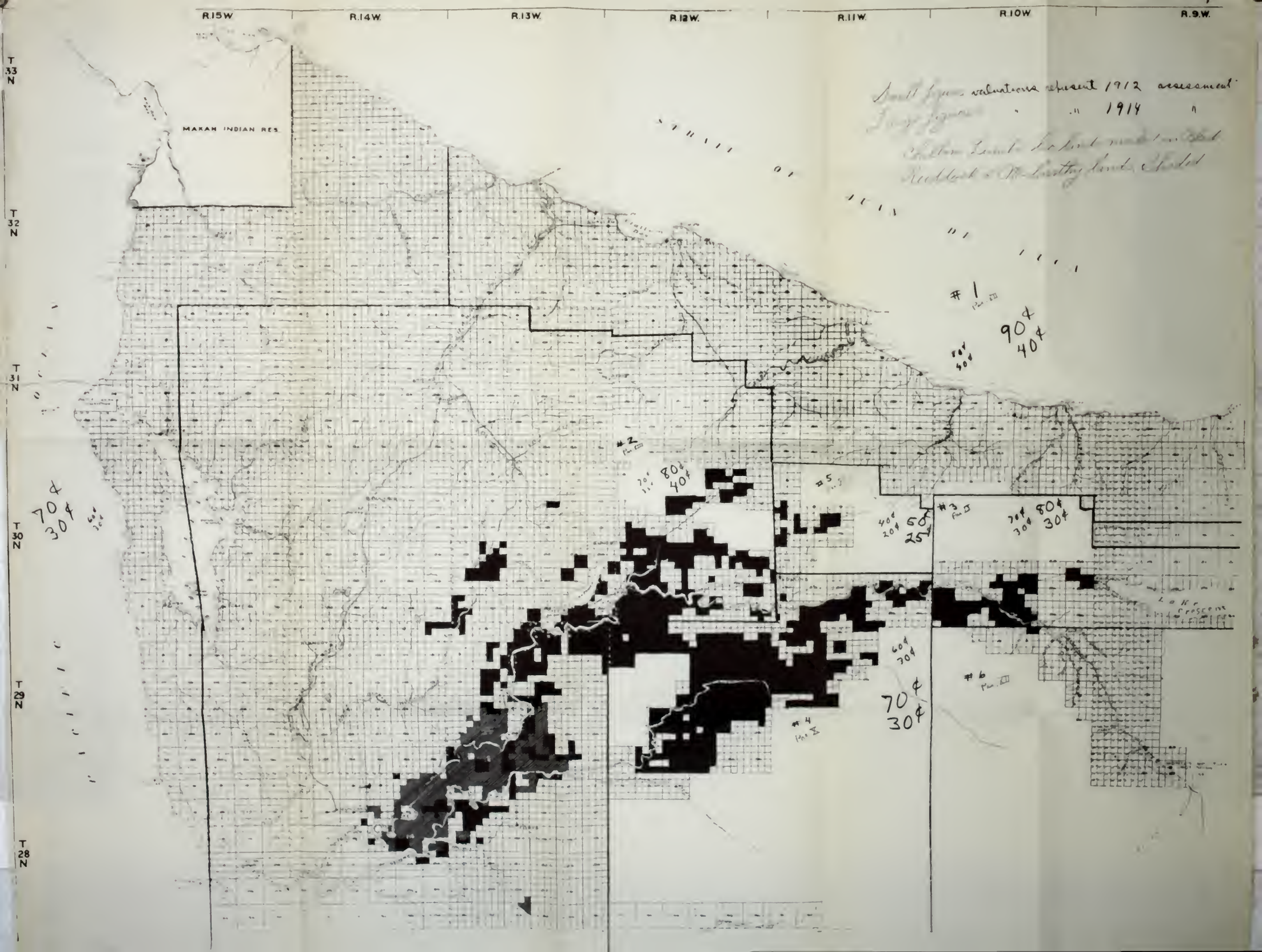
EARLE & STEINERT,
Attorneys for Appellants.

BUTTERFIELD & KEENEY, of Counsel.


R.15W.
R.14W.
R.13W.
R.12W.
R.11W.
R.10W.
R.9.W.
T 33 N
T 32 N
T 31 N
T 30 N
T 29 N
T 28 N
MAKAH INDIAN RES.
Small figures valuations represent 1912 assessment
" " 1914 "
#1
90¢
40¢
#2
80¢
40¢
70¢
30¢
#3
80¢
30¢
50¢
25¢
#4
70¢
30¢
#5
#6
60¢
30¢
LOWER CRESCENT